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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. –, Original

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TEXAS, ET AL.,

Defendants

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

TOM GENTRY,
Attorney General,
State of Arkansas.

Of Counsel:

H. S. YOCUM,
El Dorado, Arkansas;
W. W. SHARP,
Brinkley, Arkansas;
KAY MATTHEWS,
Little Rock, Arkansas;
E. J. BALL,
Fayetteville, Arkansas.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. —, Original

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TEXAS, AND JOHN BEN SHEPPERD,
ATTORNEY GENERAL OF TEXAS,

Defendants

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Arkansas, appearing by its duly authorized Attorney General, Tom Gentry, respectfully moves and prays the Court for leave to file the Bill of Complaint submitted herewith.

The State of Arkansas seeks to bring this suit under the authority of Article III, Section 2, Clause 2, of the Constitution of the United States, and 28 U. S. C. A., Section 1251.

TOM GENTRY,
Attorney General,
State of Arkansas.

Of Counsel:

H. S. YOCUM,
El Dorado, Arkansas;
W. W. SHARP,
Brinkley, Arkansas;
KAY MATTHEWS,
Little Rock, Arkansas;
E. J. BALL,
Fayetteville, Arkansas.

Statement in Support of Motion

A controversy exists between the complainant, the State of Arkansas, and the defendants, the State of Texas and John Ben Shepperd, the duly elected, qualified and acting Attorney General for the State of Texas. This controversy grows out of a contract entered into between the State of Arkansas through her official agent and instrumentality, the University of Arkansas, and the William Buchanan Foundation, a private corporation existing under and by virtue of the laws of the State of Texas.

The William Buchanan Foundation administers a charity created by William Buchanan by a declaration of trust executed in Bowie County, Texas in 1923.

Pursuant to the provisions of the 1923 declaration of trust, the Foundation entered into a contract with the University of Arkansas, the complainant's official agent and instrumentality, under the terms of which the Foundation promised to pay the sum of five hundred thousand dollars ($500,000.00) to the University in exchange for its promise to construct and maintain for a period of twenty (20) years a pediatric ward which is to be the sixth floor of the new charitable hospital of the medical center of the University of Arkansas School of Medicine.

Complainant, by her authorized agent, has fully performed her part of the said contract to date, and the five hundred thousand dollars ($500,000.00) is now due and payable by the Foundation. The Foundation is ready, willing, and able to pay over to complainant the five hundred thousand dollars ($500,000.00), but is prevented from so doing by a pending action for an injunction in the 102nd District Court of Bowie County, Texas. That action was filed by the State of Texas against the Foundation and its

Board of Directors, and the University of Arkansas in November of 1952, and seeks to enjoin the performance of the contract hereinabove set out on the ground that the entire funds of the Foundation are to be expended for the residents and citizens of Bowie County, Texas, and for the benefit of such residents and citizens only, by reason of the following provisions of the 1923 declaration of trust:

> **The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.**
>
> Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust fund for the purposes mentioned in this paragraph.

The Foundation believes and the complainant contends that the above provisions of the 1923 declaration of trust authorize expenditures of the fund in any geographical area whatever, and the benefits of the Foundation may be world wide.

Accordingly, it is believed that the rights of the State of Arkansas and her citizens can be protected only by a decree from this Court granting relief prayed for in the complaint.

It is respectfully submitted that the motion for leave to file the complaint should be granted.

TOM GENTRY,
Attorney General,
State of Arkansas.

Of Counsel:

H. S. YOCUM,
El Dorado, Arkansas;
W. S. SHARP,
Brinkley, Arkansas;
E. J. BALL,
Fayetteville, Arkansas.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. —, Original

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TEXAS, AND JOHN BEN SHEPPERD, ATTORNEY GENERAL OF TEXAS,

Defendants

BILL OF COMPLAINT

The State of Arkansas, by Tom Gentry, its Attorney General, by leave of the Court, files its Bill of Complaint, and respectfully says:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, and 28 U. S. C. A., Section 1251.

II

In this behalf, the complainant acts by and through the University of Arkansas, an official state instrumentality charged by statute and by law with the duty and responsibility of maintaining a public educational institution of higher learning, and a general charitable hospital for the

alleviation of pain and suffering of the needy citizens of the State of Arkansas, and for teaching purposes in connection with the University of Arkansas School of Medicine.

III

The defendant John Ben Shepperd is the duly authorized, qualified, and acting Attorney General for the State of Texas.

IV

On the 9th day of October, 1923, William Buchanan executed a trust instrument in Bowie County, Texas, a certified copy of said instrument, as filed with the Secretary of State of the State of Texas, is attached hereto, and made a part hereof as "Exhibit A", as completely and as fully as if copied verbatim herein.

V

Under the provisions of the said trust instrument, William Buchanan granted, conveyed, assigned, and set over to certain named trustees and their successors in trust, to have and to hold forever, some one million dollars ($1,000,000.00) in cash and United States Government bonds, and complainant avers on information and belief that the corpus of said trust fund is now in excess of two and one-half million dollars ($2,500,000.00).

VI

Among other provisions, the trust instrument contains the following:

> "The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enterprise, to be known as 'The William Buchanan Foundation' in the city of Texarkana, Texas, under which name

and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

"1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies, and institutions and for the aid of such activities, agencies, and institutions already established, or expended through such other means or agencies which, from time to time, shall seem expedient to the Trustees and their successors in this Trust. **The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.**

"2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust fund for the purposes mentioned in this paragraph.

". . .

"5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to

convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this Trust, it shall be organized under the name of 'The William Buchanan Foundation' and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation."

VII

Pursuant to the provisions of the trust agreement hereinabove set out in paragraph numbered IV, the William Buchanan Foundation was chartered on February 8, 1930, as a private corporation under and by virtue of the laws of the State of Texas. A copy of the charter of said foundation is attached hereto as "Exhibit B", and made a part hereof as fully as if copied verbatim herein. Subsequently thereto, the trust fund hereinabove set out was transferred unconditionally to the corporation known as the William Buchanan Foundation, and the said corporate entity now holds the trust fund, subject to all the provisions of the original declaration of trust, dated October 9, 1923.

VIII

Paragraph II of the charter of The William Buchanan Foundation reads as follows:

"The purpose for which the corporation is formed is the support of any benevolent, charitable or educational undertaking, and, particularly, for the purpose set forth in the Trust Deed creating The Wm. Buchanan Foundation, dated October 9, 1923, executed by the late William Buchanan of Bowie County, Texas, a certified copy of which is attached hereto and made a part hereof."

IX

Pursuant to the provisions of the charter of the William Buchanan Foundation and the trust instrument executed on

October 9, 1923, by William Buchanan, the William Buchanan Foundation, by its Board of Directors, entered into a contract with the complainant, through its instrumentality, the University of Arkansas, on February 28, 1950. A copy of said contract is attached hereto as "Exhibit C", and made a part hereof as fully as if copied verbatim herein.

X

At a regular meeting duly convened on the 4th day of March, 1950, the Board of Trustees of the University of Arkansas, complainant's authorized instrumentality, unanimously adopted a resolution accepting the contract hereinabove set out, subject to all of the terms and conditions set forth therein, and a certified copy of the resolutions as adopted by the Board of Trustees of the University of Arkansas is attached hereto as "Exhibit D", and made a part hereof as fully as if copied verbatim herein.

XI

On the 30th day of December, 1950, the William Buchanan Foundation amended said contract with the complainant. A copy of said amendment is attached hereto as "Exhibit E", and made a part hereof as fully as if copied verbatim herein. Subsequently, at a regular meeting duly convened on the 8th day of January, 1951, the Board of Trustees of the University of Arkansas, the complainant's authorized instrumentality, unanimously adopted the contract as amended, subject to all the terms and conditions set forth therein. A certified copy of the resolution as adopted by the Board of Trustees of the University of Arkansas is attached hereto as "Exhibit F", and made a part hereof as fully as if copied verbatim herein.

XII

Pursuant to the provisions of the contract hereinbefore set out in paragraphs numbered IX, X, and XI, the William Buchanan Foundation promised to pay the sum of five hundred thousand dollars ($500,000.00) to the University of Arkansas, complainant's authorized instrumentality, in exchange for the promise of the said University of Arkansas to construct and maintain for a period of twenty (20) years an additional one hundred-bed pediatric floor in connection with the new Charity Hospital in the State Medical Center, said floor to be known as the William Buchanan Pavilion for Children. The agreement further provided that the five hundred thousand dollars ($500,000.00) promised by the William Buchanan Foundation must be matched with one million dollars ($1,000,000.00) to be obtained from other sources, thus providing for a total of one million, five hundred thousand dollars ($1,500,000.00) for the specific purpose of adding the extra pediatric floor in the new Charity Hospital in the State Medical Center.

XIII

The University of Arkansas, complainant's authorized instrumentality, has performed fully its part of the agreement to date, and pursuant to the terms of the contract hereinabcve set out between the William Buchanan Foundation and the complainant, payments of the five hundred thousand dollars ($500,000.00) are due and payable in the following manner, as set out in paragraph numbered 3 of the contract:

> "Upon receipt of formal notice from the Board of Trustees of the University of Arkansas that this grant is accepted subject to all of the terms and conditions stated herein, the William Buchanan Foundation will stand ready to make the grant available according to a

mutually agreeable procedure which will enable the fund to be drawn upon by the Treasurer of the University of Arkansas on the following basis: Before construction contracts are executed the extent to which the addition of the sixth or pediatric floor will affect the cost of the other part of the building will be determined by the architects and agreed upon by the University and the Foundation. When construction is actually begun on the sixth or pediatric floor, an amount sufficient to defray this cost may be drawn from the fund. During the actual construction of the sixth floor the remaining amounts may be drawn from the fund except that a balance of $50,000 will be left until construction is completed. All such withdrawals by the Treasurer of the University may be made only after certification by the architects, Edward Stone and Erhart, Eichenbaum and Rauch, that contractor's periodical estimates of completion are approved by them. In the event that construction of the pediatric pavilion and all attendant additional costs in the building proper do not require the expenditure of the full $500,000, and residue will be returned to the William Buchanan Foundation after the construction has been completed."

XIV

In reliance upon the said contract, the University of Arkansas, complainant's authorized instrumentality, proceeded to have plans drawn for the construction of a new Charity Hospital in the Medical Center which would include a sixth floor for one hundred pediatric beds, to be known as the William Buchanan Pavilion for Children, and on September 12, 1951, the University of Arkansas entered into contracts with W. R. Grimshaw Co., Natkin Co., and Fagan Electric Company, for the construction of said hospital, including the extra pediatric floor, at a cost of six million, five hundred and eighty three thousand, four hundred and seventy-six dollars ($6,583.476.00).

XV

At the time of the filing of this action, construction of the Medical Center and/or the new Charity Hospital, as set out in paragraph numbered XIV, has progressed to the sixth floor, and the payments under the contract between the complainant and the William Buchanan Foundation are now due and payable.

XVI

The defendant State of Texas, by its Attorney General, filed an action against the William Buchanan Foundation and its Board of Directors in the 102nd District Court of Bowie County, Texas, on November 14, 1952, whereby it sought to enjoin the performance of the contract between the William Buchanan Foundation and the complainant hereinabove set out. A copy of said complaint is attached hereto as "Exhibit G", and made a part hereof as fully as if copied verbatim herein.

XVII

On the 10th day of March, 1953, the defendant State of Texas, by its Attorney General John Ben Shepperd, filed an amendment to the complaint heretofore filed in the 102nd District Court of Bowie County, Texas, on November 14, 1952, and named the University of Arkansas, complainant's authorized instrumentality, and the Board of Trustees thereof as party defendants in said cause. A copy of said amended complaint is attached hereto as "Exhibit H", and made a part hereof as fully as if copied verbatim herein.

XVIII

The 102nd District Court of Bowie County, Texas, is without jurisdiction in the said cause, in that any judgment or decision rendered by the said Court would be without force

and effect, because the action therein involves a case or controversy between the State of Texas and the State of Arkansas, and the Attorney General for the State of Texas, John Ben Shepperd, is acting without power or authority, and in excess of the authority conferred upon him as Attorney General for the State of Texas, and that his act is illegal and in violation of the rights of complainant.

XIX

The defendants, State of Texas and John Ben Shepperd, Attorney General for the State of Texas, erroneously contend that the provisions of paragraphs numbered 1 and 2 of the declaration of trust, dated the 9th day of October, 1923 ("Exhibit A" herein), authorize the expenditures of the trust fund to be made only in Bowie County, Texas. The said erroneous contentions of the defendants are based upon the following provisions:

> **"1. The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefits of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.**
>
> "2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness such as the establishment and maintenance of a children's hospital and clinic, or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph, if, in their judgment, it becomes wise or advisable not

to use the Trust Fund for the purposes mentioned in this paragraph."

XX

The William Buchanan Foundation through its Board of Trustees, Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, Mrs. Hannah Seeger Davis, F. S. Carroll, William G. Fuller, Mrs. Olivia S. Moore, Mrs. Emily Graham Fuller, Stanley J. Seeger, Jr., and James D. Heldt, contends and believes that the said declaration of trust, marked "Exhibit A" herein, authorizes them to expend the trust fund in any geographical area whatever, and that the beneficiaries of said trust may be world-wide. The said William Buchanan Foundation, by its Board of Directors, is ready, willing, and able to perform its contract with the complainant, but it is prevented from so performing by the unlawful and illegal acts of the State of Texas and John Ben Shepperd, the Attorney General for the State of Texas.

XXI

The complainant has proceeded with the construction of the Medical Center and/or Charity Hospital to the sixth floor and is without funds to proceed further and to final completion of said hospital, and unless this Court restrains the unlawful conduct of the State of Texas and John Ben Shepperd, Attorney General for the State of Texas, the State of Arkansas and its instrumentality, the University of Arkansas, will be irreparably damaged in that it will be unable to complete the said hospital according to the original plans, and that the construction of said hospital has proceeded to the point where the plans cannot be changed, thereby reducing the total cost of construction of said hospital.

XXII

A controversy exists between the complainant and the defendants as to the interpretation, construction and application of the trust indenture executed by William Buchanan on the 9th day of October, 1923. Such controversy relates particularly to paragraphs 1, 2, and 5 of said trust indenture, as set out in paragraph VI of this Bill of Complaint.

XXIII

Arkansas has no plain, speedy, or adequate remedy at law, and has no remedy whatsoever in any other court.

WHEREFORE complainant, the State of Arkansas, prays that:

1. A temporary injunction be issued restraining the defendants, State of Texas and the Attorney General of the State of Texas, from proceeding with the action now pending in the 102nd District Court of Bowie County, Texas, and that this Court take jurisdiction of the parties and subject matter.

2. This Court decree that the State of Arkansas, through its instrumentality, the University of Arkansas, is entitled to the five hundred thousand ($500,000.00) under its contract with the William Buchanan Foundation, and that upon the final determination of the said matter that the State of Texas and John Ben Shepperd, the Attorney General for the State of Texas, be permanently enjoined from any further proceedings against the William Buchanan Foundation in the District Court of Bowie County, Texas, with regard to the performance of its contract with the complainant.

3. The complainant have such other and further relief as the Court may deem proper.

4. The complainant have judgment for its cost herein expended.

TOM GENTRY,
Attorney General,
State of Arkansas.

Of Counsel:
H. S. YOCUM,
El Dorado, Arkansas;
W. W. SHARP,
Brinkley, Arkansas;
KAY MATTHEWS,
Little Rock, Arkansas;
E. J. BALL,
Fayetteville, Arkansas.

EXHIBIT A

KNOW ALL MEN BY THESE PRESENTS: That I, William Buchanan of Bowie County, Texas, for the uses and purposes hereinafter set forth, have given, granted, conveyed, assigned and set over, and by these presents do give, grant, convey, assign and set over unto William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, A. J. Kizer, Louis Heilbron, John W. Wheeler and F. S. Carroll as Trustees (hereinafter collectively called Trustees) and to their successors in this Trust, all of the following described property (hereinafter called Trust Fund) to-wit:

> Four Hundred Thousand ($400,000.00) Dollars in cash and United States three and one-half per cent. (3½%) 1932-1947 Bonds of the face value of Six Hundred Thousand ($600,000.00) Dollars.

TO HAVE AND TO HOLD unto the said William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, Louis Heilbron, A. J. Kizer, John W. Wheeler and F. S. Carroll as Trustees, and unto their successors in this Trust and their assigns forever.

The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enterprise, to be known as "The William Buchanan Foundation" in the city of Texarkana, Texas, under which name and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies and institutions and for the aid of such activities, agencies and

institutions already established, or expended through such other means or agencies which, from time to time, shall seem expedient to the Trustees and their successors in this Trust. The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said county, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.

2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust Fund for the purposes mentioned in this paragraph.

3. The Trustees shall have power to sell, transfer and convey the Trust Fund, or any part thereof, and to invest and reinvest the principal or income therefrom, and to deal with the expend the income and principal of the Trust Fund as in the judgment of the Trustees will best promote the object and purposes of this Trust. Trustees hereafter elected, as hereinafter provided, shall, upon their election, acceptance and qualification, succeed to all the rights, privileges and duties herein conferred on the Trustees above named. The Trustees herein named and their successors shall be deemed as acting in a collective capacity, and in case of the death, resignation or removal of any one of them the title to the Trust Fund, or any part thereof, in any way vested in such Trustee, shall automatically pass to and vest in the remaining and succeeding Trustees.

4. As soon as practicable after the execution hereof, said Trustees shall meet and organize. They shall elect from their membership a President, a Vice President, a Secretary

and a Treasurer (the latter two offices may be filled by the same person) and such other officers as they may deem necessary or proper. Said Trustees shall also have the power and authority to appoint agents and to make and adopt a constitution and such rules, regulations and by-laws as they may deem proper to carry out this Trust, not inconsistent, however, with the provisions hereof.

5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this Trust, it shall be organized under the name of "The William Buchanan Foundation" and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation.

6. Until and unless a corporation is organized, as herein authorized, William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim and Louis Heilbron shall act as Trustees for a period of three years from the date hereof; W. J. Buchanan, Mrs. Helen Buchanan Seeger, F. S. Carroll, W. L. Estes and John J. King shall act as Trustees for a period of two years from the date hereof; and Dr. Stanley J. Seeger, J. G. Boyce, A. L. Burford, A. J. Kizer and John W. Wheeler shall act as Trustees for a period of one year from the date hereof. At the expiration of the term of each of these groups of Trustees, a like number of Trustees shall be elected to serve for a term of three years, and any Trustees whose terms have expired may be re-elected. All Trustees hereafter elected shall be persons of high intelligence, of good moral character, interested in the purposes for which this Trust is created, and in a position to enter actively upon the duties of said Trustees, as herein contemplated. Said successive Trustees shall be elected by ballot by the affirmative vote of a majority of the Trustees, not including those whose offices are to be filled. In case of a vacancy occurring in said Board of fourteen (14) Trustees here created by death, resignation or otherwise, the remaining Trustees shall fill such vacancy

in the manner herein provided, the Trustee so elected to fill out the unexpired term of his predecessor. If not more than five (5) vacancies occur at any one time in the Board of Trustees, the remaining Trustees shall administer this Trust with all the rights, powers and duties conferred on the Trustees, herein named until such vacancies are filled. All questions arising hereunder shall be decided by a majority vote of the whole Board of Directors.

7. No Trustee shall be liable personally for anything done hereunder, acts or omissions involving dishonesty or moral turpitude excepted. No Trustee or any employee of said Trustees shall receive or legally be entitled to receive any pecuniary profit from the Trust Fund or operations hereunder, except reasonable compensation for services rendered in effecting one or more of the purposes herein mentioned, or as a proper beneficiary of one of the charitable purposes aforesaid.

8. In creating this Trust it has been my aim to establish a Foundation on a basis of such financial soundness, under such competent and conservative management and with the prospect of such great usefulness, that other charitably inclined persons may be led to contribute to its endowment and thus take part in promoting its objects and benefits to humanity. The privilege of participating in this undertaking is therefore extended to any one desiring to lend a helping hand in enlarging its scope and usefulness.

IN TESTIMONY WHEREOF, I have hereunto set my hand this the 9th day of October, 1923.

(Signed) WM. BUCHANAN.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority, on this day personally appeared William Buchanan, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 9th day of October, 1923.

(Signed) A. S. WATLINGTON,
Notary Public, Bowie County, Texas. (Seal)

We, the Trustees above named, hereby acknowledge receipt of the Trust Fund and agree to carry out the terms of this Trust to the best of our skill and ability.

(Signed) WM. BUCHANAN,
HANNAH C. BUCHANAN,
HELEN BUCHANAN SEEGER,
W. J. BUCHANAN,
W. R. GRIM,
W. L. ESTES,
STANLEY J. SEEGER,
A. J. KIZER,
F. S. CARROLL,
J. G. BOYCE,
LOUIS HEILBRON,
JNO. J. KING,
JNO. W. WHEELER,
A. L. BURFORD.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority, in and for the county and state aforesaid, on this day personally appeared William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, A. J. Kizer, Louis Heilbron, John W. Wheeler, and F. S. Carroll, known to me to be the persons whose names are subscribed to the foregoing instrument, and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 9th day of October, 1923.

(Signed) A. S. WATLINGTON,
Notary Public, Bowie County, Texas. (Seal)

I, F. S. Carroll, Secretary of the Board of Trustees of The William Buchanan Foundation, do hereby certify that the above and foregoing instrument is a true and correct

copy of the Trust Deed creating The William Buchanan Foundation.

In testimony whereof witness my hand this Feb. 1, 1930.

F. S. CARROLL.

EXHIBIT B

CHARTER OF THE WILLIAM BUCHANAN FOUNDATION

Know All Men by These Presents:

That we, W. L. Estes, Louis Heilbron, Jno. J. King, A. L. Burford and J. G. Boyce, all resident citizens of Texarkana, Texas, for themselves and for and on behalf of the other Trustees hereinafter named, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation.

I

The name of this corporation is "The William Buchanan Foundation."

II

The purpose for which the corporation is formed is the support of any benevolent, charitable or educational undertaking, and, particularly, for the purpose set forth in the Trust Deed creating The Wm. Buchanan Foundation, dated October 9, 1923, executed by the late William Buchanan of Bowie County, Texas, a certified copy of which is attached hereto and made a part hereof.

III

The domicile of this corporation is Texarkana, Bowie County, Texas.

IV

This corporation shall exist for a period of fifty (50) years.

V

The number of trustees of this corporation shall not be less than three (3) nor more than twelve (12). The Trustees selected to serve for the first year are the following:

Name	Address
Stanley J. Seeger	Milwaukee, Wisconsin
J. G. Boyce	Texarkana, Texas
A. L. Burford	Texarkana, Texas
A. J. Kizer	Texarkana, Texas
Jno. W. Wheeler	Texarkana, Texas
Jno. J. King	Texarkana, Texas
W. L. Estes	Texarkana, Texas
F. S. Carroll	Texarkana, Texas
Mrs. Hannah C. Buchanan	Texarkana, Texas
W. J. Buchanan	Texarkana, Texas
Louis Heilbron	Texarkana, Texas
Mrs. Helen Buchanan Seeger	Milwaukee, Wisconsin

The Trustees shall select such officers for the corporation as may be provided by its by-laws.

VI

This corporation shall have no capital stock. The property and assets which shall be transferred to and administered by this corporation consist of cash and negotiable securities aggregating approximately One Million Three Hundred Thousand ($1,300,000.00) Dollars.

In Testimony Whereof, Witness our signatures this the first day of February, 1930.

W. L. Estes,
Louis Heilbron,
Jno. J. King,
A. L. Burford,
J. G. Boyce.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority in and for Bowie County, Texas, on this day personally appeared Louis Heilbron, Jno. J. King, A. L. Burford and J. G. Boyce, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

In testimony whereof witness my hand and seal of office this the 1st day of February, 1930.

R. M. BONE,

[SEAL.] *Notary Public, Bowie County, Texas.*

STATE OF TEXAS,
County of Smith:

Before me, the undersigned authority in and for Smith County, Texas, on this day personally appeared W. L. Estes, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

In testimony whereof witness my hand and seal of office this 3rd day of February, 1930.

DAVID WIENTCH,

[SEAL.] *Notary Public, Smith County, Texas.*

EXHIBIT C

THE WILLIAM BUCHANAN FOUNDATION

Texarkana, Texas

February 28, 1950.

Dr. Lewis Webster Jones, President,
University of Arkansas,
Fayetteville, Arkansas.

DEAR SIR:

This will acknowledge your letter of February eighteenth with its enclosures and exhibits in which you made application on behalf of the University of Arkansas for a grant of $500,000 from The William Buchanan Foundation. The funds applied for, together with additional Federal monies, are to be used for the construction of a floor in the new teaching hospital in the University Medical Center. This floor would be known as the William Buchanan Pavilion for Children and would contain one hundred pediatric beds.

This is to advise you that your application has been acted upon favorably by the Foundation. The funds applied for will be granted subject to the following terms and conditions:

1. During the present biennium (June, 1949 through May, 1951) the University of Arkansas will contribute from State sources $1,300,000 for the construction of the teaching hospital. The Federal Government will match this fund on the basis of two dollars of Federal money for each one dollar of State money. In this manner a minimum of $3,900,000 will become available.

2. The William Buchanan Foundation in granting the application herein discussed will make available monies up to a maximum of $500,000. This fund will also be matched by Federal money on the basis of two dollars of Federal money for each one dollar of Foundation money. Thus, when added to the funds referred to in the preceding paragraph, these additional amounts will bring to $5,400,000

the total minimum available funds to be used during the present biennium for the construction of the teaching hospital.

3. Upon receipt of formal notice from the Board of Trustees of the University of Arkansas that this grant is accepted subject to all of the terms and conditions stated herein, the William Buchanan Foundation will cause to be established in The Texarkana National Bank at Texarkana a special fund of $500,000 to the account of the Treasurer, University of Arkansas. This fund may be set up in cash or negotiable securities of a nature mutually acceptable to both the Foundation and the Treasurer of the University. In the event that income-bearing securities are used, it is understood and agreed that any income accruing to such fund shall be paid over by the depository to the William Buchanan Foundation. This fund may be drawn upon by the Treasurer of the University of Arkansas on the following basis: Before construction contracts are executed the extent to which the addition of the fifth or pediatric floor will affect the cost of the other part of the building will be determined by the architects and agreed upon by the University and the Foundation. At the time the construction contracts are executed an amount sufficient to defray this cost may be drawn from the fund. During the actual construction of the fifth floor the remaining amounts may be drawn from the fund except that a balance of $50,000 will be left until construction is completed. All such withdrawals by the Treasurer of the University may be made only after certification by the architects, Edward Stone and Erhart, Eichenbaum and Rauch, that contractor's periodical estimates of completion are approved by them. In the event that construction of the pediatric pavilion and all attendant additional costs in the building proper do not require the expenditure of the full $500,000, any residue will be returned to the William Buchanan Foundation after the construction has been completed.

4. To implement the foregoing plan, the Board of Trustees of the University of Arkansas prior to December 31, 1950, will place a call for competitive bids for the construction of a four hundred bed teaching hospital, such building to be

at the site and constructed according to the general plans submitted with your February 18, 1950 letter of application. One hundred of the beds in this hospital will be pediatric beds to be located on the fifth floor and to be known as the "William Buchanan Pavilion for Children". Thirty-five of the remaining three hundred beds in the hospital are to be additional pediatric beds.

5. In accepting the money referred to herein from the William Buchanan Foundation, the Board of Trustees agrees to operate the new teaching hospital for at least twenty years after the formal opening of said hospital and to operate the one hundred thirty-five pediatric beds referred to in the foregoing paragraphs as pediatric beds during that time subject, of course, to temporary deviation in the event of emergencies. Should the Board of Trustees discontinue such operations during said twenty year period for any cause, the Board of Trustees agrees to reimburse the William Buchanan Foundation the monies transferred under the grant discussed herein on the basis of one-twentieth of the amount contributed for each year of the twenty-year period during which such operations are discontinued.

6. The Board of Trustees of the University of Arkansas at one of its duly convened meetings will pass a formal resolution as follows:

> "WHEREAS, in a letter dated February 18, 1950, the President of the University on behalf of the Board of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the purpose of constructing a pediatric pavilion in the new teaching hospital to be built in Little Rock as part of the University Medical Center program, and
>
> WHEREAS, in a letter dated February 28, 1950, the William Buchanan Foundation has indicated its willingness to make such grant subject to certain terms and conditions,
>
> BE IT RESOLVED that the $500,000 grant as outlined in the February 28, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all

of the terms and conditions set forth in said letter and it is directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors,

BE IT FURTHER RESOLVED that said grant and the Federal funds obtained to match this grant will be used to construct a pediatric pavilion, to be named the "William Buchanan Pavilion for Children," as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients."

Very truly yours,

THE WILLIAM BUCHANAN FOUNDATION,
by S. J. SEEGER,
President.

Accepted by the Board of Trustees, University of Arkansas, March 4, 1950.
Mr. Eichenbaum

EXHIBIT D and EXHIBIT F

Excerpt from

MINUTES OF SPECIAL MEETING OF THE BOARD OF TRUSTEES UNIVERSITY OF ARKANSAS, HELD AT THE MARION HOTEL, LITTLE ROCK, MARCH 4, 1950, A 2 P.M.

Moved and carried that the following resolution be adopted:

WHEREAS, in a letter dated February 18, 1950, the President of the University on behalf of the Board of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the

purpose of constructing a pediatric pavilion in the new teaching hospital to be built in Little Rock as a part of the University Medical Center program, and

WHEREAS, in a letter dated February 28, 1950, the William Buchanan Foundation has indicated its willingness to make such grant subject to certain terms and conditions,

BE IT RESOLVED that the $500,000 grant as outlined in the February 28, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all of the terms and conditions set forth in said letter and it is directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors,

BE IT FURTHER RESOLVED that this grant and the Federal funds obtained to match this grant will be used to construct a pediatric pavilion, to be named the "William Buchanan Pavilion for Children" as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients.

Excerpt from

MINUTES OF SPECIAL MEETING, BOARD OF TRUSTEES, UNIVERSITY OF ARKANSAS, HELD AT THE ALBERT PIKE HOTEL, LITTLE ROCK, ARKANSAS, ON JANUARY 8, 1951 AT 2:30 P. M.

Moved and carried unanimously to adopt the following resolution:

WHEREAS, in a letter dated February 18, 1950, the President of the University on behalf of the Board of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the purpose of constructing a pediatric pavilion in the new

teaching hospital to be built in Little Rock as part of the University Medical Center program, and

WHEREAS, this application has previously been granted as evidenced by a letter from the Foundation dated February 28, 1950, and a reply from this Board dated March 11, 1950, which agreement is now recognized as being void and to be superseded by an entirely new agreement referred to hereafter, and

WHEREAS, in a letter dated December 30, 1950, the William Buchanan Foundation has indicated its willingness to agree to make this grant subject to certain amended terms and conditions,

BE IT RESOLVED that the $500,000 grant as outlined in the December 30, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all of the terms and conditions set forth in said letter and it is directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors.

BE IT FURTHER RESOLVED that said grant and the Federal, State, or private funds from other mutually agreeable private sources obtained to match this grant will be used to construct a pediatrics pavilion, to be named the "William Buchanan Pavilion for Children", as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients.

I hereby certify this to be a true and correct copy.

T. C. Carlson,
Secretary
Board of Trustees.

May 1, 1953

EXHIBIT E

"EXHIBIT C"

(Copies of Letters Constituting an Agreement Entered into by The William Buchanan Foundation and The University of Arkansas).

December 30, 1950.

Dr. Lewis Webster Jones, President
University of Arkansas
Fayetteville, Arkansas

DEAR SIR:

Reference is made to the letter agreement embodied in the February 28, 1950 letter from the undersigned to you and the reply dated March 11, 1950, signed by T. C. Carlson on behalf of the Board of Trustees of the University of Arkansas. Reference is also here made to the other documents referred to in said letters.

In view of changed circumstances, the William Buchanan Foundation and the Board of Trustees of the University of Arkansas hereby agree to cancel said agreement in its entirety and substitute therefor a new and separate contract, the terms of which are set forth hereinafter and in your letter of acceptance.

Your letter of February 18, 1950, with its enclosures and exhibits contained the application of the University of Arkansas for a grant of $500,000 from the William Buchanan Foundation. The funds applied for, together with additional monies to be supplied from Federal, State or other mutually agreeable private sources, are to be used for the construction of a floor in the new teaching hospital in the University Medical Center. This floor would be known as the William Buchanan Pavilion for Children and would contain one hundred pediatric beds. This is to advise you that the funds applied for will be granted subject to the following terms and conditions:

1. During the present biennium (June, 1949 through May, 1951) the University of Arkansas will contribute from State sources at least $1,300,000 for the construction of the teach-

ing hospital. The Federal Government, the State Government, or other mutually agreeable private sources will furnish additional money to match this fund on the basis of two to one. In this manner a minimum of $3,900,000 will become available.

2. The William Buchanan Foundation in granting the application herein discussed will make available monies up to a maximum of $500,000. This fund will also be matched by money from Federal, State, or mutually agreeable private sources in addition to the funds referred to in the preceding paragraph, on the basis of two to one. In this manner an additional $1,500,000 will be made available for the specific purpose of adding an extra pediatric floor to the new teaching hospital in the University Medical Center. Thus, when added to the funds referred to in the preceding paragraph, these additional amounts will bring to $5,400,000 the total minimum available funds to be used for the construction of the teaching hospital. The William Buchanan Foundation will not be under any obligation to contribute any part of this $500,000 grant unless and until the entire balance of the $5,400,000 has been definitely appropriated and made available for this construction.

3. Upon receipt of formal notice from the Board of Trustees of the University of Arkansas that this grant is accepted subject to all of the terms and conditions stated herein, the William Buchanan Foundation will stand ready to make the grant available according to a mutually agreeable procedure which will enable the fund to be drawn upon by the Treasurer of the University of Arkansas on the following basis: Before construction contracts are executed the extent to which the addition of the sixth or pediatric floor will affect the cost of the other part of the building will be determined by the architects and agreed upon by the University and the Foundation. When construction is actually begun on the sixth or pediatric floor, an amount sufficient to defray this cost may be drawn from the fund. During the actual construction of the sixth floor the remaining amounts may be drawn from the fund except that a balance of $50,000 will be left until construction is completed. All such withdrawals by the Treasurer of the Uni-

versity may be made only after certification by the architects, Edward Stone and Erhart, Eichenbaum and Rauch, that contractor's periodical estimates of completion are approved by them. In the event that construction of the pediatric pavilion and all attendant additional costs in the building proper do not require the expenditure of the full $500,000, any residue will be returned to the William Buchanan Foundation after the construction has been completed.

4. To implement the foregoing plan, the Board of Trustees of the University of Arkansas prior to June 30, 1951, will place a call for competitive bids for the construction of a four hundred bed teaching hospital, such building to be at the site and constructed according to the general plans submitted with your February 18, 1950 letter of application. One hundred of the beds in this hospital will be pediatric beds to be located on the sixth floor and to be known as the "William Buchanan Pavilion for Children". Thirty-five of the remaining three hundred beds in the hospital are to be additional pediatric beds.

5. In accepting the money referred to herein from the William Buchanan Foundation, the Board of Trustees agrees to operate the new teaching hospital for at least twenty years after the formal opening of said hospital and to operate the one hundred thirty-five pediatric beds referred to in the foregoing paragraphs as pediatric beds during that time subject, of course, to temporary deviation in the event of emergencies. Should the Board of Trustees discontinue such operations during said twenty-year period for any cause, the Board of Trustees agrees to reimburse the William Buchanan Foundation the monies transferred under the grant discussed herein on the basis of one-twentieth of the amount contributed for each year of the twenty-year period during which such operations are discontinued.

6. The Board of Trustees of the University of Arkansas at one of its duly convened meetings will pass a formal resolution as follows:

"WHEREAS, in a letter dated February 18, 1950 the President of the University on behalf of the Board

of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the purpose of constructing a pediatric pavilion in the new teaching hospital to be built in Little Rock as part of the University Medical Center program, and

WHEREAS, this application has previously been granted as evidenced by a letter from the Foundation dated February 28, 1950, and a reply from this Board dated March 11, 1950, which agreement is now recognized as being void and to be superceded by an entirely new agreement referred to hereafter, and

WHEREAS, in a letter dated December 30, 1950, the William Buchanan Foundation has indicated its willingness to agree to make this grant subject to certain amended terms and conditions.

BE IT RESOLVED that the $500,000 grant as outlined in the December 30, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all of the terms and conditions set forth in said letter and it is directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors,

BE IT FURTHER RESOLVED that said grant and the Federal, State, or funds from other mutually agreeable private sources obtained to match this grant will be used to construct a pediatric pavilion, to be named the 'William Buchanan Pavilion for Children', as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients."

Very truly yours,

THE WILLIAM BUCHANAN FOUNDATION,

By ——— ———,

President.

Office of the Vice President
for Finance

January 15, 1951

Dr. S. J. Seeger
President
The William Buchanan Foundation
930 Mercantile Bank Building
Dallas, Texas

Dear Dr. Seeger:

Your proposal of December 30, 1950, addressed to President Lewis Webster Jones, was presented to the Board of Trustees of the University of Arkansas at its meeting in Little Rock on January 8, 1951. The Board requested me, as Secretary, to express to you and to the members of the governing board of the William Buchanan Foundation its appreciation of your generous action.

The Board of Trustees of the University of Arkansas passed the following resolution unanimously:

"WHEREAS, in a letter dated February 18, 1950, the President of the University on behalf of the Board of Trustees has made formal application to the William Buchanan Foundation for a grant of $500,000 for the purpose of constructing a pediatric pavilion in the new teaching hospital to be built in Little Rock as part of the University Medical Center program, and

WHEREAS, this application has previously been granted as evidenced by a letter from the Foundation dated February 28, 1950, and a reply from this Board dated March 11, 1950, which agreement is now recognized as being void and to be superceded by an entirely new agreement referred to hereafter, and

WHEREAS, in a letter dated December 30, 1950, the William Buchanan Foundation has indicated its willingness to agree to make this grant subject to certain amended terms and conditions,

BE IT RESOLVED that the $500,000 grant as outlined in the December 30, 1950, letter from the William Buchanan Foundation is hereby accepted subject to all of the terms and conditions set forth in said letter and it is

directed that said letter together with a copy of the complete application from the University be made a part of the permanent file of this Board, and that the terms and conditions of this grant shall be binding upon this Board and any of its legal successors,

BE IT FURTHER RESOLVED that said grant and the Federal, State, or funds from other mutually agreeable private sources obtained to match this grant will be used to construct a pediatric pavilion, to be named the 'William Buchanan Pavilion for Children', as an integral part of the teaching hospital in the new University of Arkansas Medical Center,

BE IT FURTHER RESOLVED that the William Buchanan Pavilion for Children will be operated and maintained by the Board of Trustees without regard to social or racial backgrounds of the patients."

Yours very truly,

T. C. CARLSON,
Secretary, Board of Trustees.

EXHIBIT G

IN THE 102ND DISTRICT COURT OF BOWIE COUNTY, TEXAS

THE STATE OF TEXAS,
County of Bowie:

To the Honorable Judge of Said Court:

Now comes Price Daniel, the duly elected, qualified and acting Attorney General of the State of Texas, hereinafter called Plaintiff, complaining of The William Buchanan Foundation, and of Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, Mrs. Hannah Seeger Davis, F. S. Carroll, and William G. Fuller in their capacity as trustees of The William Buchanan Founda-

tion, hereinafter called Defendants, and for cause of action respectfully shows the Court as follows:

I

That Plaintiff, as the duly elected, qualified and acting Attorney General of the State of Texas, is charged with the duty of seeing that all trusts or gifts for general charitable or religious purposes are faithfully administered according to the intent of the settlors or donors and that the purposes of such trusts or gifts are fully effectuated.

II

That Defendant The William Buchanan Foundation is a private corporation duly organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas; that Defendants Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, and Mrs. Hannah Seeger Davis are duly elected, qualified and acting trustees of The William Buchanan Foundation and are all residents of Dallas County, Texas; that Defendants F. S. Carroll and William G. Fuller are duly elected, qualified and acting trustees of The William Buchanan Foundation and are residents of Bowie County, Texas.

III

That on the 9th day of October, 1923, William Buchanan executed a trust instrument, a certified copy of which instrument, as filed with the Secretary of State of the State of Texas, is attached hereto and made a part hereof as "Exhibit A" as completely and as fully as if copied verbatim herein.

IV

That by said trust instrument William Buchanan granted, conveyed, assigned and set over unto certain named trustees and their successors in the trust to have and to hold forever Four Hundred Thousand ($400,000.00) Dollars in cash and United States three and one-half per cent (3½%)

bonds of the face value of Six Hundred Thousand ($600,000.00) Dollars; and Plaintiff avers on information and belief that the corpus of said trust fund is now approximately Two and One-Half Million ($2,500,000.00) Dollars.

V

That, among other provisions, the trust instrument contains the following:

"The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enterprise, to be known as 'The William Buchanan Foundation' in the city of Texarkana, Texas, under which name and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

"1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies and institutions and for the aid of such activities, agencies and institutions already established, or expended through such other means or agencies which, from time to time, shall seem expedient to the Trustees and their successors in this Trust. The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said county, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.

"2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's

hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust Fund for the purposes mentioned in this paragraph.

" * * *

"5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this Trust, it shall be organized under the name of 'The William Buchanan Foundation' and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation."

VI

That the above quoted language of the trust instrument is plain and unambiguous in its direction that the primary beneficiaries of the trust be the residents of Bowie County, Texas and of the adjoining counties, and that the charitable institutions, agencies, means, and activities contemplated by said instrument be established, administered, pursued and carried out in Bowie County, Texas.

VII

That, alternatively, if the above quoted language be deemed ambiguous, a proper construction of said language necessitates the conclusion that the settlor intended the residents of Bowie County, Texas and of the adjoining counties to be the primary beneficiaries of the trust, and that he further intended that the charitable institutions, agencies, means and activities through which the purposes of the

trust were to be effectuated be established, administered, pursued and carried out in Bowie County, Texas.

VIII

That The William Buchanan Foundation was chartered February 8, 1930, and that a copy of the charter of said Foundation is attached hereto as "Exhibit A" and made a part hereof as fully as if copied verbatim herein.

IX

That paragraph II of the charter of The William Buchanan Foundation reads as follows:

> "The purpose for which the corporation is formed is the support of any benevolent, charitable or educational undertaking, and, particularly, for the purpose set forth in the Trust Deed creating The Wm. Buchanan Foundation, dated October 9, 1923, executed by the late William Buchanan of Bowie County, Texas, a certified copy of which is attached hereto and made a part hereof."

X

That that part of the purpose clause of the charter of The William Buchanan Foundation above quoted which states that the corporation is formed for the purpose of supporting "any benevolent, charitable or educational undertaking" is at variance with the clear directions of the settlor in the trust instrument, and that a corporation formed to carry out the purposes of The William Buchanan Trust could not include said purpose.

XI

That it is wrongfully contended by the Defendants that the primary beneficiaries of the charitable trust created by William Buchanan are not limited to the residents of Bowie County, Texas and of the adjoining counties but may be drawn from any portion of the United States or of the world to the exclusion of the residents of Bowie and adjoining counties.

XII

That Defendants also wrongfully contend that the charitable institutions, agencies, means, and activities authorized by the trust instrument need not be established, administered, pursued, and carried out in Bowie County, but that such institutions, agencies, means, and activities may be established, administered, pursued and carried out in any portion of the United States or of the world.

XIII

That in accordance with Defendants' interpretation of the trust instrument, they have heretofore made expenditures from the trust fund for the benefit of the following institutions and agencies outside Bowie County, Texas:

(1) Five Thousand ($5,000.00) Dollars to The Texas Eleemosynary Commission for the purpose of making a survey of the care of the mentally sick in Texas.

(2) Approximately Thirty Thousand Seven Hundred Sixty-Eight ($30,768.00) Dollars to the Southwestern Medical School of The University of Texas at Dallas for the development and maintenance of a research laboratory.

(3) One Thousand Eight Hundred Thirty-Six and 84/100ths ($1,836.84) Dollars to The Council of Social Agencies for a survey of Dallas County's health facilities for children.

(4) Two Hundred Thousand ($200,000.00) Dollars to the Medical Branch of The University of Texas for the support of a Child Health Program.

(5) Five Hundred ($500.00) Dollars to Dr. Chauncey D. Leake, Dean of The University of Texas Medical Branch in Galveston, for expenses incident to securing a Director for said Child Health Program.

XIV

That Defendants also have agreed to contribute Five Hundred Thousand ($500,000.00) Dollars to The University

of Arkansas to be used for the construction of a floor in the new teaching hospital being built in Little Rock, Arkansas as part of the University Medical Center program and approximately Thirty-Eight Thousand ($38,000.00) Dollars to the Southwestern Medical School of The University of Texas at Dallas for the development and maintenance of a research laboratory.

XV

That since the Trust was created, the only sums expended thereunder in Bowie or surrounding counties, have totaled Sixteen Thousand Six Hundred ($16,600.00) Dollars, of which amount Thirteen Thousand ($13,000.00) Dollars was contributed to the purchase of the Bowie County Health Unit and Three Thousand Six Hundred ($3,600.00) Dollars was contributed to the Bowie County Child Welfare Board.

XVI

That Plaintiff avers that it is the purpose and intention of Defendants The William Buchanan Foundation and the trustees thereof, unless restrained by this Honorable Court, to continue the expenditure and dissipation of the trust funds outside of Bowie County, in contravention of the settlor's charitable purpose and intent announced in the trust instrument. Plaintiff fears and therefore avers that said Defendants will take all of the aforesaid steps at some indefinite time in the future so that Plaintiff will be unable to discharge his duty of seeing that this public charitable trust is faithfully administered according to the intent of the settlor and its purpose fully effectuated.

XVII

That among other provisions the trust instrument contains the following:

> "5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation

and to convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this trust, it shall be organized under the name of 'The William Buchanan Foundation' and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation.

"6. Until and Unless a corporation is organized, as herein authorized, William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim and Louis Heilbron shall act as Trustees for a period of three years from the date hereof; W. J. Buchanan, Mrs. Helen Buchanan Seeger, F. S. Carroll, W. L. Estes and John J. King shall act as Trustees for a period of two years from the date hereof, and Dr. Stanley J. Seeger, J. G. Boyce, A. L. Burford, A. J. Kizer and John W. Wheeler shall act as Trustees for a period of one year from the date hereof. At the expiration of the term of each of these groups of Trustees, a like number of Trustees shall be elected to serve for a term of three years, and any Trustees whose terms have expired may be re-elected. All Trustees hereafter elected shall be persons of high intelligence, of good moral character, interested in the purposes for which this Trust is created, and in a position to enter actively upon the duties of said Trustees, as herein contemplated. Said successive Trustees shall be elected by ballot by the affirmative vote of a majority of the Trustees, not including those whose offices are to be filled. In case of a vacancy occurring in said Board of fourteen (14) Trustees here created by death, resignation or otherwise, the remaining Trustees shall fill such vacancy in the manner herein provided, the trustee so elected to fill out the unexpired term of his predecessor. If not more than five (5) vacancies occur at any one time in the Board of Trustees, the remaining Trustees shall administer this Trust with all the rights, powers and duties conferred on the Trustees herein named until such vacancies are filled. All questions arising hereunder shall be decided by a majority vote of the whole Board of Directors."

XVIII

That, contrary to the express directions of the settlor, paragraph 5 of the Charter of The William Buchanan Foundation provides, in part, as follows:

"The number of trustees of this corporation shall be not less than three (3) nor more than twelve (12) . . ."

XIX

That contrary to the express directions of the settlor there have been until recently only eight trustees of The William Buchanan Foundation and that there are presently only seven trustees of said Foundation.

XX

That under the laws of this State this Court has jurisdiction to construe a charitable trust, to determine the beneficiaries, and to declare the duties of the trustees thereof.

Wherefore, Plaintiff prays that this Court take jurisdiction of the parties and the subject matter of this cause; that the Court by its decree herein find and declare that the primary beneficiaries of the trust created by William Buchanan are the residents of Bowie County, Texas and of the adjoining counties, and that the charitable institutions, agencies, means and activities authorized by the trust instrument must be established, administered, pursued and carried out in Bowie County, Texas; that Defendant The William Buchanan Foundation, its trustees, agents, servants and employees be enjoined from expending any further sums of money for the construction, furnishing or maintenance of buildings or institutions outside of Bowie County; that the Defendant The William Buchanan Foundation and the trustees thereof be directed to comply in the future with the settlor's directions and limitations on the charitable activities provided for in the trust instrument; that the Court appoint two trustees and that the newly appointed trustees and the present trustees be directed to forthwith amend the charter of The William Buchanan

Foundation by changing the purpose clause to conform with the purposes set forth in the trust instrument and by requiring that there be fourteen (14) trustees of said Foundation; that the Court further direct the trustees to proceed immediately to elect five (5) additional trustees and to comply in the future with the settlor's requirement as to the number and manner of electing trustees; for general relief, and for costs of suit.

PRICE DANIEL,
Attorney General of Texas
WILLIAM P. HOLLOWAY,
MARIETTA MCGREGOR CREEL,
Assistant Attorneys General
Attorneys for Plaintiff
Capitol Station
Austin, Texas

CHARTER OF THE WILLIAM BUCHANAN FOUNDATION

Know All Men By These Presents:

That we, W. L. Estes, Louis Heilbron, Jno. J. King, A. L. Burford and J. G. Boyce, all resident citizens of Texarkana, Texas, for themselves and for and on behalf of the other Trustees hereinafter named, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation.

I

The name of this corporation is "The William Buchanan Foundation."

II

The purpose for which the corporation is formed is the support of any benevolent, charitable or educational undertaking, and, particularly, for the purpose set forth in the Trust Deed creating The Wm. Buchanan Foundation, dated October 9, 1923, executed by the late William Buchanan of Bowie County, Texas, a certified copy of which is attached hereto and made a part hereof.

III

The domicile of this corporation is Texarkana, Bowie County, Texas.

IV

This corporation shall exist for a period of fifty (50) years.

V

The number of trustees of this corporation shall not be less than three (3) nor more than twelve (12). The Trustees selected to serve for the first year are the following:

NAME	ADDRESS
Stanley J. Seeger,	Milwaukee, Wisconsin.
J. G. Boyce,	Texarkana, Texas.
A. L. Burford,	Texarkana, Texas.
A. J. Kizer,	Texarkana, Texas.
Jno. W. Wheeler,	Texarkana, Texas.
Jno. J. King,	Texarkana, Texas.
W. L. Estes,	Texarkana, Texas.
F. S. Carroll,	Texarkana, Texas.
Mrs. Hannah C. Buchanan,	Texarkana, Texas.
W. J. Buchanan,	Texarkana, Texas.
Louis Heilbron,	Texarkana, Texas.
Mrs. Helen Seeger,	Milwaukee, Wisconsin.

The Trustees shall select such officers for the corporation as may be provided by its by-laws.

VI

This corporation shall have no capital stock. The property and assets which shall be transferred to and administered by this corporation consist of cash and negotiable securities aggregating approximately One Million Three Hundred Thousand ($1,300,000.00) Dollars.

In Testimony Whereof, Witness our signatures this the first day of February, 1930.

W. L. Estes,
Louis Heilbron,
Jno. J. King,
A. L. Burford,
J. G. Boyce.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority in and for Bowie County, Texas, on this day personally appeared Louis Heilbron, Jno. J. King, A. L. Burford and J. G. Boyce, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and consideration therein expressed.

In testimony whereof witness my hand and seal of office this the 1st day of February 1930.

R. M. BONE,
Notary Public, Bowie County, Texas.

STATE OF TEXAS,
County of Smith:

Before me, the undersigned authority in and for Smith County, Texas, on this day personally appeared W. L. Estes, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

In testimony whereof witness my hand and seal of office this the 3rd day of February, 1930.

DAVID WIENTCH,
Notary Public, Smith County, Texas.

KNOW ALL MEN BY THESE PRESENTS That I, William Buchanan of Bowie County, Texas, for the uses and purposes hereinafter set forth, have given, granted, conveyed, assigned and set over, and by these presents do give, grant, convey, assign and set over unto William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, A. J. Kizer, Louis Heilbron, John W. Wheeler and F. S. Carroll as Trustees (hereinafter collectively called Trustees) and to

their successors in this Trust, all of the following described property (hereinafter called Trust Fund) to-wit:

Four Hundred Thousand ($400,000.00) Dollars in cash and United States three and one-half per cent. (3½%) 1932-1947 Bonds of the face value of Six Hundred Thousand ($600,000.00) Dollars.

TO HAVE AND TO HOLD unto the said William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, Louis Heilbron, A. J. Kizer, John W. Wheeler and F. S. Carroll as Trustees, and unto their successors in this Trust and their assigns forever.

The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enterprise, to be known as "The William Buchanan Foundation" in the city of Texarkana, Texas, under which name and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies and institutions and for the aid of such activities, agencies and institutions already established, or expended through such other means or agencies which, from time to time, shall seem expedient to the Trustees and their successors in this Trust. The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said county, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.

2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the pre-

ceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust Fund for the purposes mentioned in this paragraph.

3. The Trustees shall have power to sell, transfer and convey the Trust Fund, or any part thereof, and to invest and reinvest the principal or income therefrom, and to deal with and expend the income and principal of the Trust Fund as in the judgment of the Trustees will best promote the object and purposes of this Trust. Trustees hereafter elected, as hereinafter provided, shall, upon their election, acceptance and qualification, succeed to all the rights, privileges and duties herein conferred on the Trustees above named. The Trustees herein named and their successors shall be deemed as acting in a collective capacity, and in case of the death, resignation or removal of any one of them the title to the Trust Fund, or any part thereof, in any way vested in such Trustee, shall automatically pass to and vest in the remaining and succeeding Trustees.

4. As soon as practicable after the execution hereof, said Trustee shall meet and organize. They shall elect from their membership a President, a Vice President, a Secretary and a Treasurer (the latter two offices may be filled by the same person) and such other officers as they may deem necessary or proper. Said Trustees shall also have the power and authority to appoint agents and to make and adopt a constitution and such rules, regulations and by-laws as they may deem proper to carry out this Trust, not inconsistent, however, with the provisions hereof.

5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to convey the Trust Fund

to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this Trust, it shall be organized under the name of "The William Buchanan Foundation" and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation.

6. Until and unless a corporation is organized, as herein authorized, William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim and Louis Heilbron shall act as Trustees for a period of three years from the date hereof; W. J. Buchanan, Mrs. Helen Buchanan Seeger, F. S. Carroll, W. L. Estes and John J. King shall act as Trustees for a period of two years from the date hereof; and Dr. Stanley J. Seeger, J. G. Boyce, A. L. Burford, A. J. Kizer and John W. Wheeler shall act as Trustees for a period of one year from the date hereof. At the expiration of the term of each of these groups of Trustees, a like number of Trustees shall be elected to serve for a term of three years, and any Trustees whose terms have expired may be re-elected. All Trustees hereafter elected shall be persons of high intelligence, of good moral character, interested in the purposes for which this Trust is created, and in a position to enter actively upon the duties of said Trustees, as herein contemplated. Said successive Trustees shall be elected by ballot by the affirmative vote of a majority of the Trustees, not including those whose offices are to be filled. In case of vacancy occurring in said Board of fourteen (14) Trustees here created by death, resignation or otherwise, the remaining Trustees shall fill such vacancy in the manner herein provided, the Trustee so elected to fill out the unexpired term of his predecessor. If not more than five (5) vacancies occur at any one time in the Board of Trustees, the remaining Trustees shall administer this Trust with all the right, powers and duties conferred on the Trustees herein named until such vacancies are filled. All questions arising hereunder shall be decided by a majority vote of the whole Board of Directors.

7. No Trustees shall be liable personally for anything done hereunder, acts or omissions involving dishonesty or moral turpitude excepted. No trustee or any employee of

said Trustees shall receive or legally be entitled to receive any pecuniary profit from the Trust Fund or operations hereunder, except reasonable compensation for services rendered in effecting one or more of the purposes herein mentioned, or as a proper beneficiary of one of the charitable purposes aforesaid.

8. In creating this Trust it has been my aim to establish a Foundation on a basis of such financial soundness, under such competent and conservative management and with the prospect of such great usefulness, that other charitably inclined persons may be led to contribute to its endowment and thus take part in promoting its objects and benefits to humanity. The privilege of participating in this undertaking is therefore extended to any one desiring to lend a helping hand in enlarging its scope and usefulness.

In Testimony Whereof, I have hereunto set my hand this the 9th day of October, 1923.

(Signed) Wm. Buchanan

State of Texas,
County of Bowie:

Before me, the undersigned authority, on this day personally appeared William Buchanan, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 9th day of October, 1923.

(Signed) A. S. Watlington,
(seal) *Notary Public, Bowie County, Texas.*

We, the Trustees above named, hereby acknowledge receipt of the Trust Fund and agree to carry out the terms of this Trust to the best of our skill and ability.

(Signed) Wm. Buchanan,
Hannah C. Buchanan,
Helen Buchanan Seeger,
W. J. Buchanan,
W. R. Grim,
W. L. Estes,
Stanley J. Seeger,
A. J. Kizer,
F. S. Carroll,
J. G. Boyce,
Louis Heilbron,
Jno. J. King,
Jno. W. Wheeler,
A. L. Burford.

STATE OF TEXAS,
County of Bowie:

Before me, the undersigned authority, in and for the county and state aforesaid, on this day personally appeared William Buchanan, Mrs. Hannah C. Buchanan, W. R. Grim, W. J. Buchanan, Dr. Stanley J. Seeger, Mrs. Helen Buchanan Seeger, A. L. Burford, J. G. Boyce, W. L. Estes, John J. King, A. J. Kizer, Louis Heilbron, John W. Wheeler, and F. S. Carroll, known to me to be the persons whose names are subscribed to the foregoing instrument, and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 9th day of October, 1923.

(SEAL) (Signed) A. S. WATLINGTON,
Notary Public, Bowie County, Texas.

I, F. S. Carroll, Secretary of the Board of Trustees of The William Buchanan Foundation, do hereby certify that the above and foregoing instrument is a true and correct copy of the Trust Deed creating The William Buchanan Foundation.

In Testimony whereof witness my hand this Feb. 1, 1930.

F. S. CARROLL.

EXHIBIT H

No. 010437-A

IN THE 102ND DISTRICT COURT OF BOWIE COUNTY, TEXAS

JOHN BEN SHEPPERD, ATTORNEY GENERAL OF TEXAS,

v.

THE WILLIAM BUCHANAN FOUNDATION, ET AL.

To the Honorable Judge of Said Court:

Now comes John Ben Shepperd, the duly elected, qualified and acting Attorney General of the State of Texas, hereinafter called Plaintiff, and files this his first amended orig-

inal petition in lieu of his original petition filed herein on the 14th day of November, 1952, complaining of The William Buchanan Foundation, and of Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, Mrs. Hannah Seeger Davis, F. S. Carroll, William G. Fuller, Mrs. Olivia S. Moore, Mrs. Emiline Grim Fuller, Stanley J. Seeger, Jr. and James D. Heldt in their capacity as trustees of The William Buchanan Foundation; and of the Board of Regents of The University of Texas, and of Dudley K. Woodward, Jr., David M. Warren, Mrs. Margaret Batts Tobin, Claude W. Voyles, Dr. L. S. Oates, Tom Sealy, Lee Lockwood, J. R. Sorrell, and Leroy Jeffers in their capacity as members of the Board of Regents of The University of Texas; and of the Board of Trustees of The University of Arkansas and of L. C. Carter, Pauline Hoeltzel, Wilie T. Jones, P. E. Murphy, Earl Williams, W. W. Sharp, Jack Stephens, Henry S. Yocum, Baron Lange, and Dr. Carl A. Rosenbaum in their capacity as members of the Board of Trustees of The University of Arkansas, hereinafter called Defendants, and for cause of action respectfully shows the Court as follows:

I

Plaintiff, as the duly elected, qualified and acting Attorney General of the State of Texas, is charged with the duty of seeing that all trusts or gifts for general charitable or religious purposes are faithfully administered according to the intent of the settlors or donors and that the purposes of such trusts or gifts are fully effected.

II

Defendant, The William Buchanan Foundation, is a private corporation duty organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas; Defendants, Mrs. Helen B. Seeger, James G. Boyce, John W. O'Boyle, Mrs. Mary Seeger O'Boyle, Mrs. Hannah Seeger Davis, James D. Heldt, and Stanley J. Seeger, Jr. are duly elected, qualified and acting trustees of The William Buchanan Foundation and are all residents of Dallas

County, Texas; Defendants, F. S. Carroll, Mrs. Emiline Grim Fuller and Mrs. Olivia S. Moore are duly elected, qualified and acting trustees of The William Buchanan Foundation and are residents of Bowie County, Texas; Defendant, William G. Fuller, is a duly elected, qualified and acting trustee of The William Buchanan Foundation and is a resident of Miller County, Arkansas; Defendant members of the Board of Regents are the duly appointed, qualified and acting members of the Board of Regents of The University of Texas, and service may be had upon the Chairman of said Board, Tom Sealy, who resides in Midland County, Texas; Defendant members of the Board of Trustees are the duly appointed, qualified and acting members of the Board of Trustees of The University of Arkansas, and service may be had upon the Chairman of said Board, Henry S. Yocum, who resides in Union County, Arkansas.

III

On the 9th day of October, 1923, William Buchanan executed a trust instrument, a certified copy of which instrument, as filed with the Secretary of State of the State of Texas, is attached hereto and made a part hereof as "Exhibit A" as completely and fully as if copied verbatim herein.

IV

By said trust instrument, William Buchanan granted, conveyed, assigned and set over unto certain named trustees and their successors in the trust to have and to hold, forever, Four Hundred Thousand ($400,000.00) Dollars in cash, and United States three and one-half per cent (3½%) bonds of the face value of Six Hundred Thousand ($600,000.00) Dollars; and Plaintiff avers on information and belief that the corpus of said trust fund is now approximately Two and One-Half Million ($2,500,000.00) Dollars.

V

Among other provisions, the trust instrument contains the following:

"The purpose of this conveyance and delivery of the Trust Fund is to create and endow a charitable enter-

prise, to be known as 'The William Buchanan Foundation' in the city of Texarkana, Texas, under which name and title its activities shall be carried on in the manner and for the uses and purposes following, to-wit:

"1. The Trust Fund and the income therefrom shall be held, used and expended by said Trustees and their successors in this Trust for charitable purposes and for the alleviation of suffering and distress, and to that end the Trust Fund may be used for the establishment and maintenance of charitable and benevolent activities, agencies and institutions and for the aid of such activities, agencies and institutions already established, or expended through such other means or agencies which from time to time, shall seem expedient to the Trustees and their successors in this Trust. *The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.*

"2. Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust Fund for the purposes mentioned in this paragraph.

". . .

"5. The Trustees and their successors shall have power and authority to organize a corporation if in their judgment it becomes advisable to do so to carry

out the purposes of this Trust, or such of said purposes as may be lawfully carried out by a corporation, and to convey the Trust Fund to such corporation, when organized, to be used by such corporation so created as herein provided. If a corporation is formed for administering this trust, it shall be organized under the name of 'The William Buchanan Foundation' and the persons then acting as Trustees shall constitute the first Board of Directors of such corporation." (Emphasis added.)

VI

The above quoted language of the trust instrument is plain and unambiguous in its direction that the primary beneficiaries of the trust be the residents of Bowie County, Texas and of the adjoining counties, and that the charitable institutions, agencies, means and activities contemplated by said instrument be established, administered, pursued and carried out in Bowie County, Texas.

VII

Alternatively, if the above quoted language be deemed ambiguous, a proper construction of said language necessitates the conclusion that the settlor intended the residents of Bowie County, Texas and of the adjoining counties to be the primary beneficiaries of the trust, and that he further intended that the charitable institutions, agencies, means and activities through which the purposes of the trust were to be effectuated by established, administered, pursued and carried out in Bowie County, Texas.

VIII

The charter of The William Buchanan Foundation was executed on February 1, 1930, filed on February 6, 1930, and a copy of said charter is attached hereto as "Exhibit A" and made a part hereof as fully as if copied verbatim herein.

IX

It is wrongfully contended by the Defendants that the primary beneficiaries of the charitable trust created by William Buchanan are not limited to the residents of Bowie County, Texas and of the adjoining counties but may be drawn from any portion of the United States or of the world to the exclusion of the residents of Bowie and adjoining counties.

X

Defendants also wrongfully contend that the charitable institutions, agencies, means and activities authorized by the trust instrument need not be established, administered, pursued and carried out in Bowie County, but that such institutions, agencies, means and activities may be established, administered, pursued and carried out in any portion of the United States or of the world.

XI

In accordance with Defendants' interpretation of the trust instrument, The William Buchanan Foundation has heretofore made expenditures from the trust fund for the benefit of the following institutions and agencies outside Bowie County, Texas:

(1) Five Thousand ($5,000.00) Dollars to the Texas Eleemosynary Commission for the purpose of making a survey of the care of the mentally sick in Texas.

(2) Thirty-one Thousand ($31,000.00) Dollars to the Southwestern Medical School of The University of Texas at Dallas for the development and maintenance of a research laboratory.

(3) One Thousand Eight Hundred Thirty-six and 84/100 ($1,836.84 Dollars to The Council of Social Agencies for a survey of Dallas County's health facilities for children.

(4) One Hundred Twenty Thousand Seven Hundred Thirty-two and 85/100 ($120,732.85) Dollars to the Medical Branch of The University of Texas for the support of a Child Health Program.

(5) Five Hundred ($500.00) Dollars to Dr. Chauncey D. Leake, Dean of The University of Texas Medical Branch in Galveston, for expenses incident to securing a Director for said Child Health Program.

XII

Defendant, The William Buchanan Foundation, has presently outstanding commitments to The University of Arkansas in the sum of Five Hundred Thousand ($500,000.00) Dollars and to The University of Texas in the sum of approximately Thirty-eight Thousand ($38,000.00) Dollars, copies of which commitments are attached hereto as "Exhibit B" and are made a part hereof as fully, for all purposes, as if incorporated herein verbatim; which commitments if fulfilled will violate the announced intent and purpose of the settlor of the trust to the great detriment of the primary beneficiaries of the trust, the residents of Bowie and adjoining counties.

XIII

Since the Trust was created, the only sums expended thereunder in Bowie or adjoining counties, have totaled Twenty-five Thousand Seven Hundred Twenty-eight and 25/100 ($25,728.25) Dollars.

XIV

Plaintiff avers that it is the purpose and intention of Defendants, The William Buchanan Foundation, and the trustees thereof, unless restrained by this Honorable Court, to fulfill these commitments and, further, to continue the expenditure and dissipation of the trust funds outside the limits of Bowie County, in contravention of the settlor's charitable purpose and intent announced in the trust instrument. Plaintiff fears and therefore avers that said Defendants will take all of the aforesaid steps at some indefinite time in the future so that Plaintiff will be unable to discharge his duty of seeing that this public charitable trust is faithfully administered according to the intent of the settlor and its purpose fully effectuated.

XV

Under the laws of this State this Court has jurisdiction to construe a charitable trust, to determine the beneficiaries, and to declare the duties of the trustees thereof.

Wherefore, Plaintiff prays that this Court take jurisdiction of the parties and the subject matter of this cause; that the Court, by its decree herein, find and declare that the primary beneficiaries of the trust created by William Buchanan are the residents of Bowie County, Texas and of counties adjoining Bowie County, Texas, and that the charitable institutions, agencies, means and activities authorized by the trust instrument must be established, administered, pursued and carried out in Bowie County, Texas; that Defendant, The William Buchanan Foundation, its trustees, agents, servants and employees be enjoined from fulfilling the commitments heretofore made to The University of Arkansas and to The University of Texas; that the Defendant The William Buchanan Foundation and the trustees thereof be directed to comply in the future with the settlor's directions and limitations on the charitable activities provided for in the trust instrument; for general relief, and for costs of suit.

JOHN BEN SHEPPERD,
Attorney General of Texas.
WILLIAM H. HOLLOWAY,
MARIETTA MCGREGOR CREEL,
Assistant Attorneys General
Attorneys for Plaintiff
Capitol Station, Austin, Texas

"Exhibit A" herein is the same as complainant's Exhibit A and Exhibit B.

"Exhibit B" herein included the complainant's Exhibits C, D, E and F.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. –, Original

STATE OF ARKANSAS,

Complainant

vs.

STATE OF TEXAS, AND JOHN BEN SHEPPERD,
ATTORNEY GENERAL OF TEXAS,

Defendants

BRIEF ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT FOR COMPLAINANT

TOM GENTRY,
Attorney General of
The State of Arkansas,
Little Rock, Arkansas.

Of Counsel:

H. S. YOCUM,
El Dorado, Arkansas,
W. W. SHARP,
Brinkley, Arkansas.
KAY MATTHEWS,
Assistant to the Attorney General,
Little Rock, Arkansas.
E. J. BAIL,
Special Assistant to the Attorney General,
Fayetteville, Arkansas.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. –, Original

STATE OF ARKANSAS,

Complainant

vs.

STATE OF TEXAS, AND JOHN BEN SHEPPERD,
ATTORNEY GENERAL OF TEXAS,

Defendants

BRIEF ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT FOR COMPLAINANT

Statement of the Case

A controversy exists between the complainant, the State of Arkansas, and the defendants, the State of Texas and John Ben Shepperd, the duly elected, qualified and acting Attorney General for the State of Texas. This controversy grows out of a contract entered into between the State of Arkansas through her official agent and instrumentality, the University of Arkansas, and the William Buchanan Foundation, a private corporation existing under and by virtue of the laws of the State of Texas.

The William Buchanan Foundation administers a charity created by William Buchanan by a declaration of trust executed in Bowie County, Texas in 1923.

Pursuant to the provisions of the 1923 declaration of trust, the Foundation entered into a contract with the University of Arkansas, the complainant's official agent and instrumentality, under the terms of which the Foundation promised to pay the sum of five hundred thousand dollars ($500,000.00) to the University in exchange for its promise to construct and maintain for a period of twenty (20) years a pediatric ward which is to be the sixth floor of the new charitable hospital of the medical center of the University of Arkansas School of Medicine.

Complainant, by her authorized agent, has fully performed her part of the said contract to date, and the five hundred thousand dollars ($500,000.00) is now due and payable by the Foundation. The Foundation is ready, willing, and able to pay over to complainant the five hundred thousand dollars ($500,000.00) but is prevented from so doing by a pending action for an injunction in the 102nd District Court of Bowie County, Texas. That action was filed by the State of Texas against the Foundation and its Board of Directors, and the University of Arkansas in November of 1952, and seeks to enjoin the performance of the contract hereinabove set out on the ground that the entire funds of the Foundation are to be expended for the residents and citizens of Bowie County, Texas, and for the benefit of such residents and citizens only, by reason of the following provisions of the 1923 declaration of trust:

> **The Trust Fund and the income therefrom shall be administered in Bowie County, Texas, but for the benefit not only of the citizens or residents of said County, but also for the benefit of the citizens or residents of adjoining counties, as well as for the benefit of such other persons as in the judgment of the Trustees should receive the benefits of the activities or institutions established hereunder.**

Without in any way limiting the power of the Trustees with respect to any of the activities mentioned in

the preceding paragraph, I suggest that the Trust Fund be employed, for the most part, in some concentrated charitable enterprise of broad usefulness, such as the establishment and maintenance of a children's hospital and clinic or some other charitable institution or institutions of a kindred nature, leaving said Trustees, however, free to use the Trust Fund for any of the other purposes mentioned in the preceding paragraph if, in their judgment, it becomes wise or advisable not to use the Trust fund for the purposes mentioned in this paragraph.

The Foundation believes and the complainant contends that the above provisions of the 1923 declaration of trust authorizes expenditures of the fund in any geographical area whatever, and the benefits of the Foundation may be world wide.

Accordingly, it is believed that the rights of the State of Arkansas and her citizens can be protected only by a decree from this Court granting relief prayed for in the complaint.

BRIEF

The jurisdiction of the Supreme Court is set forth in the first two clauses of Section 2, Article III of the Constitution, which are as follows:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;; . . . to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; . . .
>
> "In all Cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate jurisdiction, both

as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

These Constitutional provisions have been supplemented by the following legislative enactments (28 U.S.C.A.):

"Section 1251. *Original Jurisdiction*

(a) The Supreme Court shall have original and exclusive jurisdiction of:

(1) All controversies between two or more States;

* * * * * * *

It should be noted at the outset that only Clause 1 of Section 2 of Article III of the Constitution confers jurisdiction: Clause 2 merely divides that jurisdiction into original and appellate. "This paragraph (Clause 2) distributing the original and appellate jurisdiction of this Court is not to be taken as enlarging the judicial power of the United States or adding to the cases or matters to which by the first paragraph (Clause 1) the judicial power is declared to extend." Mr. Justice Brewer in *Minnesota* v. *Hitchcock et al.*, 185 U. S. 373 (1902).

Accord: *Louisiana* v. *Texas et al.*, 176 U. S. 1 (1900); *California* v. *Southern Pacific Railway*, 157 U. S. 229 (1895).

Consequently, if the requirements of Clause 1 that "the judicial Power shall extend . . . *to controversies between two or more States*" can be satisfied in the instant case, the Court has jurisdiction of this cause.

It would seem that any *controversy* between two states would satisfy the foregoing requirement and the language of many of the cases appears to support this conclusion. The Court has, for example, repeatedly made the following, or similar, statement:

"It is apparent on the face of these clauses (clauses 1 and 2 of Section 2 of Article III) that in one class of

cases the jurisdiction of the courts of the Union depends 'on the character of the cause, whoever may be the parties,' and in the other, on the character of the parties, whatever may be the subject of the controversy. *Cohens v. Virginia*, 19 U. S. 6." Harlan J. in *United States v. Texas*, 143 U. S. 621 (1892)

"If two states are parties, it is entirely unimportant what may be the subject matter of the controversy." Brewer, J. in *South Dakota* v. *North Carolina*, 192 U. S. 286 (1904).

"The original jurisdiction depends solely on the character of the parties, and is confined to the cases in which are those enumerated parties, and those only." Fuller, C.J. in *Louisiana* v. *Texas et al.*, 176 U. S. 1 (1900).

See, also, *Missouri v. Illinois et al.*, 180 U. S. 208, 219 (1901).

There are, however, numerous limitations on this broad view of the jurisdiction of the Court under Article III. Thus, the Court has no jurisdiction over purely political questions: *Massachusetts* v. *Mellon*, 262 U. S. 447 (1923); *Louisiana* v. *Texas et al.*, 176 U. S. 1 (1900). Neither does it have jurisdiction where there is no actual controversy between states or where the state has suffered no injury.

Massachusetts v. *Missouri et al.*, 308 U. S. 1 (1939);
United States v. *West Virginia et al.*, 295 U. S. 463 (1935).

Nor has it jurisdiction where the suit has been instituted for the benefit of individual citizens and the state is only a nominal party plaintiff. *New Hampshire* v. *Louisiana et al.*, 108 U. S. 76 (1883); *Louisiana* v. *Texas et al.*, 176 U. S. 1 (1900); See, *Oklahoma* v. *Gulf, Colo. & Santa Fe Ry., et al.*, 220 U. S. 290 (1911).

The only limitation on the Court's jurisdiction which is here applicable, however, is the requirement that the plead-

ings must present a "justiciable" issue, or, as it is sometimes phrased, that the subject matter be one of "judicial cognizance", before it is a "case" or "controversy" within the meaning of the Constitutional provisions. *Texas* v. *Florida et al.*, 306 U. S. 398 (1939); *South Dakota* v. *North Carolina*, 192 U. S. 286 (1904); *United States* v. *West Virginia et al.*, 295 U. S. 463 (1935); *Kansas* v. *Colorado*, 185 U. S. 125 (1902).

The Supreme Court has always recognized, however, that the violation of the contractual rights of a state, or the invasion of its proprietary interests or property rights, by a sister state presents a justiciable case or controversy within the Court's original jurisdiction.

Kentucky v. *Indiana, et al.*, 281 U. S. 163 (1930);
Pennsylvania v. *West Virginia*, 262 U. S. 553 (1923);
South Dakota v. *North Carolina*, 192 U. S. 286 (1904);
Texas v. *Florida et al.*, 306 U. S. 398 (1939);
Pennsylvania v. *The Wheeling and Belmont Bridge Company, et al.*, 13 How. 518, 14 L. ed. 249 (1852);
Georgia v. *Pennsylvania Rr. et al.*, 324 U. S. 439 (1945).

Thus, in *Kentucky* v. *Indiana et al.*, 281 U. S. 163 (1930), Kentucky and Indiana, through their respective highway commissions, had entered into an agreement to construct a bridge across the Ohio river. Indiana began to perform, whereupon nine of its citizens and taxpayers brought an action in the Indiana courts to enjoin the members of the highway commission and other officers of Indiana from carrying out the contract on the ground that it was unauthorized and void. Thereupon Indiana ceased performance. Kentucky then instituted this suit seeking specific performance and seeking to enjoin the individual defendants (the nine plaintiffs in the state court action) from prosecuting the state court action. Indiana in its pleadings declared that it thought that the contract was valid but

asserted that it was unwilling to proceed until the state court had acted on the question. The individual defendants attacked the Court's jurisdiction, and argued that under 28 U.S.C.A. Section 371, no injunction should be granted staying proceedings in the suit in the state court, that the proceedings involved the interpretation of statutes and laws of Indiana, and that the contract was not binding on the state of Indiana, being made without authority of law. (All of these questions are involved in the instant case.) The unanimous Court held: (1) the breach of the contract presented a controversy between the states within the exclusive and original jurisdiction of the Supreme Court (p. 173); (2) the individual defendants were not proper parties since their interest was represented by the state and an injunction restraining the suit was not necessary "as a decree in this suit would bind the State of Indiana and on being shown would bar any inconsistent proceedings in the courts of that state"; (3) the fact that the Court would be compelled to pass on questions of state law was immaterial. On the last point the court said (p. 176):

> "It cannot be gainsaid that in a controversy with respect to a contract between states, as to which the original jurisdiction of this court is invoked, this court has the authority and duty to determine for itself all questions that pertain to the obligations of the contract alleged. The fact that the solution of these questions may involve the determination of the effect of the local legislation of either state, as well as of acts of Congress, which are said to authorize the contract, in no way affects the duty of this court to act as the final, constitutional arbiter in deciding the questions properly presented. It has frequently been held that when a question is suitably raised whether the law of a state has impaired the obligation of a contract, in violation of the constitutional provision, this court must determine for itself whether a contract exists, what are its obligations,

and whether they have been impaired by the legislation of the state. While this court always examines with appropriate respect the decisions of state courts bearing upon such questions, such decisions do not detract from the responsibility of this court in reaching its own conclusions as to the contracts, its obligations and impairment, for otherwise the constitutional guaranty could not properly be enforced. . . . Where the states themselves are before this court for the determination of a controversy between them, neither can determine their rights inter sese, and this court must pass upon every question essential to such a determination, although local legislation and questions of state authorization may be involved."

It would appear that the only material difference between the instant case and *Kentucky* v. *Indiana et al., supra* is that in the latter both states were parties to the contract.

In *Pennsylvania* v. *West Virginia*, 262 U. S. 553 (1923), Pennsylvania brought a suit against West Virginia seeking to restrain the latter from enforcing one of its statutes which prohibited the exportation of gas until certain local requirements had been satisfied. The plaintiff contended that the enforcement of the statute would largely curtail and cut off its supply of natural gas and based its prayer for relief on the ground that the statute violated the commerce clause and "on the ground that to enforce the act will subject them to irreparable injury in respect of many of their public institutions and governmental agencies", would jeopardize the health of their citizens and would close many industries. The Court held that the case involved "a justiciable controversy between the states in the sense of the Judiciary Article of the Constitution." Van Devanter, J., writing for the majority said (p. 591):

"Each suit presents a direct issue between two states as to whether one may withdraw a natural product, a common subject of commercial dealings, from an estab-

lished current of commerce moving into the territory of the other. The complainant state asserts that the defendant state denies that such a withdrawal is an interference with interstate commerce forbidden by the Constitution. This is essentially a judicial question."

* * * * * * *

"The attitude of the complainant states is not that of mere volunteers attempting to vindicate the freedom of interstate commerce or to redress purely private grievances. Each sues to protect a twofold interest,—one as the proprietor of various public institutions and schools whose supply of gas will be largely curtailed or cut off by the threatened interference with the interstate current, and the other as the representative of the consuming public whose supply will be similarly affected both interests are substantial and both are threatened with serious injury."

In *South Dakota* v. *North Carolina*, 192 U. S. 286 (1904) suit was brought by South Dakota against North Carolina on bonds issued by the latter which were in default. The plaintiff sought to compel payment of the debt and, in default, the sale at public auction of North Carolina's interest in certain railroad stock mortgaged by it as security for the payment of the bonds. In upholding the court's jurisdiction, Brewer, J., declared that the case directly affected the property rights and interests of the state and added (p. 314):

"A claim for money due being a controversy of a justiciable nature, and one of the most common of controversies, would seem to naturally fall within the scope of the jurisdiction thus intended to be conferred upon the Supreme Court."

And later he said (p. 318):

"Without noticing in detail the other cases referred to by Mr. Justice Shiras in *Missouri* v. *Illinois*, 180

U.S. 208, 45 L. ed. 497, 21 Sup. Ct. Rep. 331, it is enough to say that the clear import of the decisions of this court from the beginning to the present time is in favor of its jurisdiction over an action brought by one state against another, to enforce its property right."

Texas v. *Florida et al.*, 306 U. S. 398 (1939) was an action in the nature of a bill of interpleader brought against four states and the wife and sister of E. H. R. Green, to determine the true domicile of Mr. Green. The bill alleged that each was seeking to impose death duties and that, if they were successful, his estate would be exhausted and Texas, his true domicile, would be deprived of death duties legally due it. The Supreme Court held that it had jurisdiction, saying (pp. 407-408):

"When, by appropriate procedure, a court possessing equity powers is in such circumstances asked to prevent the loss which might otherwise result from the independent prosecution of rival but mutually exclusive claims, a justiciable issue is presented for adjudication which, because it is a recognized subject of the equity procedure which we have inherited from England, is a 'case' or 'controversy' within the meaning of the Constitutional provision; and when the case is one prosecuted between states, which are the rival claimants, and the risk of loss is shown to be real and substantial, the case is within the original jurisdiction of this Court conferred by the Judiciary Article."

* * * * * * *

"We think that the Special Master's finding of jeopardy is sustained; that a justiciable 'case' between the states is presented; and that a cause of action cognizable in equity is alleged and proved. The fact that no relief by way of injunction is sought or is recommended by the Special Master does not militate against this conclusion. While in most causes in equity the principal relief sought is that afforded by injunction, there are others in which the irreparable injury which is the indispensable basis for the exercise of equity

powers is prevented by a mere adjudication of rights which is binding on the parties. This has long been the settled practice of this Court in cases of boundary disputes between states.

* * * * * * *

"While courts of equity in such suits may and frequently do give incidental relief by injunction to secure the full benefits of the adjudication and to terminate the litigation in a single suit, they are not bound to do so and their adjudication of the conflicting claims is not any the less effective as res judicata because not supplemented by injunction. We do not doubt that when the equity powers of the Court have been invoked it has power in its discretion to give such incidental relief by way of injunction as will make its determination the effective means of avoiding risk of loss to any of the parties by reason of the asserted multiple tax liability. But the plenary effect of its decision as res judicata, and considerations of convenience in the levying of the tax by the usual state procedure, make it unnecessary and undesirable that the Court should proceed beyond adjudication. The fact that the Court, for reasons of policy or convenience, does not exercise the power which it possesses and which has been traditionally exercised in like cases between private suitors does not deprive the suit of its character as a case or controversy cognizable by the Court in an original suit." (pp. 411-412)

The Court also held that, if the court had jurisdiction, the joinder of individuals as necessary parties was immaterial, saying (p. 405):

"The present suit is between states, and the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the states are properly made parties defendant. Cf. *United States* v. *West Virginia*, 295 U.S. 463."

In *Pennsylvania* v. *The Wheeling and Belmont Bridge Company*, 13 How. 518, 14 L. Ed. 249 (1852), Pennsylvania

brought an action to abate as a common nuisance the erection of a bridge across the Ohio river which would prevent the free passage of river boats. The gravamen of the complaint was that Pennsylvania owned certain valuable public works, canals and railways, constructed at great expense and terminating on the Ohio river, that the bridge would cut off the traffic, and that, as a result, the State's tolls would be diminished and its improvements rendered valueless. The court held that it had jurisdiction under Article III, Section 2, saying (pp. 559-560):

> "In this case the State of Pennsylvania is not a party in virtue of its sovereignty. It does not come here to protect the rights of its citizens. . . . Nor can the State prosecute this suit on the ground of any remote or contingent interest in itself. It assumes and claims, not an abstract right, but a direct interest in the controversy, and that the power of this court can redress its wrongs and save it from irreparable injury. If such a case be made out, the jurisdiction may be sustained.
>
> "When a state enters into a copartnership, or becomes a stockholder in a bank, or other corporation, its sovereignty is not involved in the business, but it stands and is treated as other stockholders or partners. And so in the present case, the rights asserted and relief prayed are considered as in no respect different from those of an individual. From the dignity of the State, the Constitution gives to it the right to bring an original suit in this court. And, this is the only privilege, if the right be established, which the State of Pennsylvania can claim in the present case."

The Court also held that the institution of the suit by the Attorney General was sufficient evidence that the suit was authorized, saying (p. 560):

> "It is objected, in the first place, that there is no evidence that the State of Pennsylvania has consented to the prosecution of this suit in its own name.

> "This would seem to be answered by the fact that the proceedings were instituted by the Attorney General of the State. He is its legal representative, and the court cannot presume, without proof, against his authority."

In *Georgia* v. *Pennsylvania Railroad Company et al.*, 324 U. S. 439 (1945), Georgia sought leave to file a bill against 20 railroads in two capacities, to wit, (1) as quasi-sovereign or as protector of her people against a continuing wrong done them and (2) in her capacity as proprietor to redress wrongs done to her as owner of a railroad and as owner and operator of various institutions of the State. The basic charge of the complaint was that the defendants were restraining trade and commerce. The defendants assertion that the bill did not charge a justiciable controversy within the original jurisdiction of the Supreme Court was rejected, the Court saying (pp. 445-446):

> ". . . we are of the opinion that Georgia as parens patriae and as proprietor of various institutions asserts a claim within judicial cognizance. . . . The complaint alleges a conspiracy to restrain trade and commerce through the fixing of rates. The history of restraints of trade makes it plain that these problems present judicial questions with which courts have long dealt."

During the course of his opinion, Douglas, J., who wrote for the majority of the Court, reviewed the decisions in which it had been held that the Court had no jurisdiction, even though the dispute was between sister states, and the decisions in which a State had been allowed to prosecute a suit in its capacity as quasi-sovereign or as parens patriae. In his opinion he made the following statements which are of interest in the present case:

> "As we have seen Georgia sues as a proprietor to redress wrongs suffered by it as the owner of a rail-

road and as the owner and operator of various public institutions. Georgia, suing for her own injuries, is a 'person' within the meaning of Section 16 of the Clayton Act, 15 USCA Section 26, 4 FCA title 15, Section 26; she is authorized to maintain suits to restrain violations of the anti-trust laws or to recover damages by reason thereof." (p. 477)

* * * * * * *

"It seems to us clear that under the authority of these cases Georgia may maintain this suit as parens patriae acting on behalf of her citizens though here, as in Georgia v. Tennessee Cooper Co. supra (206 U. S. p. 237, 51 L. ed. 1044, 27 Ct. 618, 11 Ann Cas 488), we treat the injury to the State as proprietor merely as a 'makeweight.'" (p. 450)

The court finally concluded (p. 452):

"Since the claim which Georgia asserts as parens patriae as well as proprietor meets the standards of justifiability and since Georgia is a 'person' entitled to enforce the civil sanctions of the anti-trust laws, the reasons which have been advanced for denying Georgia the opportunity to present her cause of action to this Court fail."

Since any attempt by the State of Texas to prevent performance of the contract by the Foundation to the University of Arkansas would constitute an interference with a contractual right, it would seem clear that the Supreme Court would have original and exclusive jurisdiction of the case under the foregoing decisions.

The Supreme Court has also held that it has original jurisdiction in cases in which the plaintiff stands in the position of parens patriae or institutes its suit in a quasi-sovereign capacity.

Kansas v. *Colorado*, 185 U. S. 125 (1902);

Missouri v. *Illinois*, 180 U. S. 208 (1901);

Georgia v. *Pennsylvania Railroad Co., et al.*, 324 U. S. 439 (1945);

North Dakota v. *Minnesota*, 263 U. S. 365 (1923).

In such cases, there is no direct injury to the property of the state or to it in its proprietary capacity but the act complained of affects the health or welfare of such a large number of the state's citizens that the state, in its capacity of protector of its citizens, may bring the suit. Thus in *Missouri* v. *Illinois, Supra* the Supreme Court held that Missouri could institute a suit in the Supreme Court to restrain Illinois and the Sanitary District of Chicago from discharging sewage in the Mississippi river. It would seem that in the present case the health and well-being of the citizens of Arkansas are equally directly affected, particularly since the money is tied to both hospital and educational facilities of the state.

Counsel for complainant are convinced that the Supreme Court has original and exclusive jurisdiction over this action instituted by the State of Arkansas against the State of Texas to restrain interference with its contractual rights and to enjoin the prosecution of any suit in the Texas courts seeking to interfere with such rights. (See 28 *American Jurisprudence, Equity*, Sections 98, 99 and 100 with respect to the power of a court of equity to enjoin interference by a third party with a contract.)

Assuming that the suit involves a justiciable case or controversy within the original jurisdiction of the Supreme Court, several subsidiary questions would be raised by such a suit.

1. *Authority of Arkansas to sue:* In some cases the authority of the plaintiff to institute a suit has been raised. Usually statutory authority exists, although in *Pennsyl-*

vania v. *The Wheeling and Belmont Bridge Company et al.*, 13 How. 518, 14 L. ed. 249 (1852) the court declared that where the suit had been instituted by the Attorney General, the court could not presume against his authority without proof.

2. *Defendants:* This action names the State of Texas and John Ben Shepperd, as Attorney General, as parties defendant. The naming of John Ben Sheppard raises no question as it is settled that a suit against an agent of the state is a suit against the state. *Kentucky* v. *Dennison*, 24 How. 66, 16 L. ed. 717 (1861); *Sundry Slaves* v. *Madrazo*, 1 Pet. 110, 7 L. ed 73 (1828); *Minnesota* v. *Hitchcock*, 185 U. S. 373 (1902).

It may also be desirable to join the Foundation, a Texas corporation, as a party defendant. Such a joinder would not oust the court of jurisdiction. *Texas* v. *Florida et al.*, 306 U. S. 398 (1939). No cases have been found which indicate the result which would be reached if the Foundation took the position that the contract was valid and was, therefore, realigned as a party plaintiff. It seems very unlikely, however, that Texas could urge a realignment of parties and then claim that such a realignment defeated the Court's jurisdiction, particularly if the Foundation's pleadings were carefully drawn with this point in mind.

3. *Will the Court enjoin a State official from performing duties imposed on him by state law?* It might be suggested that an injunction restraining John Ben Shepperd from prosecuting his suit against the Complainant and the Foundation in the State courts would prevent him from performing duties imposed on him by State law, and that, therefore, the injunction should not be issued. Such an argument would appear to be unsound for two reasons: (1) The fact that Mr. Shepperd could not proceed in the State courts would not prevent him from performing his duties since the United

States Supreme Court would be the proper Forum. (2) Even if he were restrained from performing his duties it would be immaterial. In *Pennsylvania* v. *West Virginia, Supra,* the bill specifically requested that the defendant be restrained from enforcing one of its legislative acts and there is no suggestion that the court is without power to take such action.

4. *Would the institution of a suit by Texas against the Foundation be fatal to a subsequent suit by Arkansas in the Supreme Court?* In *Kentucky* v. *Indiana, Supra* the plaintiff requested, as part of its relief, that an injunction be issued restraining the individual defendants from prosecuting a suit which they had instituted in the State court to have the bridge contract declared illegal. Although the suit was dismissed against the individual defendants on the ground that their only standing was as citizens of Indiana and only the State could defend the rights of the citizens, there is no suggestion that the Court could not have issued an injunction prohibiting the prosecution of an action in the state courts. On the contrary, the fact that *exclusive* jurisdiction over suits between States is vested in the Supreme Court under *28 USCA Section 1251* would make mandatory an injunction prohibiting the prosecution of such a suit in any other forum.

5. *Would the fact that the Supreme Court would be compelled to pass on questions of Texas law be fatal to the assumption of jurisdiction?* The Court squarely considered this point in *Kentucky* v. *Indiana et al.,* 281 U. S. 163 (1930) and answered the question in the negative.

Conclusion

Counsel for Complainant are convinced that this action by The State of Arkansas against The State of Texas and her Attorney General seeking to restrain the interference with its rights under its contract with the Foundation pre-

sents a "case" or "controversy" within the original jurisdiction of the Supreme Court.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. _____, Original

STATE OF ARKANSAS,
Complainant,

v.

STATE OF TEXAS AND JOHN BEN SHEPPERD,
Attorney General of Texas,
Defendants.

BRIEF IN SUPPORT OF RETURN TO RULE TO SHOW CAUSE

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State of Texas

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BRIEF IN SUPPORT OF RETURN TO RULE TO SHOW CAUSE

INTRODUCTION

This matter is before the Court on the Return of the defendants to the Rule to Show Cause why the Motion of Complainant for Leave to File Its Complaint should not be granted.

STATEMENT OF THE CASE

The State of Arkansas, as complainant, seeks to invoke the original jurisdiction of this Court under Article III, Section 2, Clause 2, of the Constitution of the United States, and 62 Stat. 927 (1948), 28 U.S.C., Section 1251, to enjoin the State of Texas

and John Ben Shepperd, the Attorney General of the State of Texas, from proceeding with an action pending in the 102nd District Court of Bowie County, Texas. Complainant asks that this Court decree that the State of Arkansas, through its instrumentality, the University of Arkansas, is entitled to Five Hundred Thousand Dollars ($500,000.00) under the contract of The William Buchanan Foundation with the University of Arkansas.

The action which complainant seeks to enjoin and which is presently pending in the 102nd District Court of Bowie County, Texas, is Cause No. 010437-A, which is styled *John Ben Shepperd, Attorney General of Texas v. The William Buchanan Foundation, et al.* In addition to the Foundation, the individual trustees in their capacity as trustees of the Foundation, The Board of Regents of The University of Texas and the individual members in their capacity as members of the Board, the Board of Trustees of the University of Arkansas and the individual members in their capacity as members of the Board were made parties defendant to the suit.

In the First Amended Original Petition filed in this suit in the Texas District Court, the Attorney General of the State of Texas made, among others, the following allegations:

(1) As Attorney General of the State of Texas he is charged with the duty of protecting and enforcing charitable trusts.

(2) William Buchanan executed a trust instrument creating "The William Buchanan Foundation," a charitable trust.

(3) The primary beneficiaries of the Buchanan trust are the residents of Bowie County, Texas, and of the adjoining counties; and the charitable institutions, agencies, means and activities contemplated by the trust are to be established, administered, pursued and carried out in Bowie County, Texas.

(4) The William Buchanan Foundation, a private corporation duly organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas, was chartered for the purpose set forth in the trust deed creating The William Buchanan Foundation.

(5) The William Buchanan Foundation has presently outstanding commitments to the University of Arkansas in the sum of Five Hundred Thousand Dollars ($500,000.00), and to the University of Texas in the sum of Thirty-eight Thousand Dollars ($38,000.00), which commitments, if fulfilled, will violate the announced intent and purpose of the settlor of the trust to the great detriment of the primary beneficiaries of the trust, the residents of Bowie County, Texas, and of adjoining counties.

(6) The William Buchanan Foundation intends to continue the expenditure of the trust funds outside the limits of Bowie County in contravention of the charitable purpose and intent announced in the trust instrument executed by William Buchanan.

The Attorney General prayed the District Court

to declare that the primary beneficiaries of the trust created by William Buchanan are the residents of Bowie County, Texas, and of the adjoining counties, and that the charitable institutions, agencies, means and activities authorized by the trust instrument must be established, administered, pursued and carried out in Bowie County, Texas. The Attorney General also prayed that the Foundation be enjoined from fulfilling its commitments to the University of Arkansas and to the University of Texas and that the Foundation be directed to comply in the future with the provisions of the trust instrument.

The State of Arkansas now asks this Court to take jurisdiction of this case to determine the exact issues which are presently before the 102nd District Court of Bowie County, Texas.

SPECIFICATION OF POINTS

I.

The William Buchanan Foundation, a private corporation organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas, is an indispensable party to this suit.

II.

This Court should not entertain this suit unless The William Buchanan Foundation is made a party thereto.

III.

Under established rules for proper alignment of parties, The William Buchanan Foundation, if a party to this suit, would be aligned as co-complainant.

IV.

Absent the consent of the State of Texas, The William Buchanan Foundation cannot be made a co-complainant in this suit.

V.

The William Buchanan Foundation cannot be made a co-complainant in this suit because jurisdiction is dependent upon the State of Arkansas being the moving party.

VI.

The William Buchanan Foundation cannot be joined as a party defendant in this suit because:

A. The William Buchanan Foundation is an indispensable party plaintiff or co-complainant.

B. Joinder of The William Buchanan Foundation as a party defendant would oust this Court of jurisdiction.

VII.

Even if The William Buchanan Foundation could properly be joined as a party defendant, this Court

should decline to exercise jurisdiction as a matter of sound equitable discretion because:

A. This Court's original jurisdiction of controversies between a State on the one side and another State and a citizen of that State on the other is not mandatory.

B. Considerations of convenience, efficiency and justice point to the 102nd District Court of Bowie County, Texas.

C. The principle of comity which obtains between courts of concurrent jurisdiction forbids interference by this Court with the suit which is pending in the 102nd District Court of Bowie County, Texas.

ARGUMENT

I.

THE WILLIAM BUCHANAN FOUNDATION IS AN INDISPENSABLE PARTY TO THIS SUIT

This Court has defined indispensable parties as "persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." *Shields v. Barrow*, 17 How. 130, 139 (1854).

As an abstract definition, it has never been substantially modified, but as this Court said in *Niles-Bement-Bond Co. v. Iron Moulders Union*, 254 U.S. 77, 80 (1920): "There is no prescribed formula for

determining in every case whether a person or corporation is an indispensable party or not."[1] The question is to be determined from all the facts in the case and the nature of the relief sought.[2]

Under the facts of this case, The William Buchanan Foundation is clearly an indispensable party. The right which the State of Arkansas asserts under the contract of The University of Arkansas with the Foundation is so dependent upon the rights and authority asserted by The William Buchanan Foundation in entering into said contract that no final determination of the one can be made without a determination of the extent of the others. Thus to decide the case presented by the Complaint, this Court would have to adjudicate directly upon the Foundation's power to enter into the contract with the University of Arkansas.

The interest of the Foundation in the controversy the State of Arkansas asks this Court to decide is obvious. The Foundation is contesting the suit which the Attorney General of the State of Texas has filed in the 102nd District Court of Bowie County, Texas. If this Court determined that the Foundation's charitable activities must be carried on in Bowie County, Texas, and that the primary beneficiaries of the Buchanan trust were the residents of Bowie County and of the adjoining counties, then the Foun-

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[1] *A. & R. Realty Co. v. Northwestern Life Ins. Co.*, 95 F. 2d 703 (C.C.A. 8th, 1938); *Carroll v. New York Life Ins. Co.*, 94 F. 2d 383 (C.C.A. 8th, 1939).

[2] *Metropolis Theater Co. v. Barkhausen*, 170 F. 2d 481 (C.C.A. 7th, 1948), cert. den. 336 U.S. 945. Authorities defining indispensable parties are collected in 6 *Cyclopedia of Federal Procedure*, 2nd Ed., 1943, ch. 21, § 2140, pp. 206-211.

dation would be precluded not only from fulfilling the commitments made to the Universities of Arkansas and Texas but also from entering into similar commitments in the future.

II.

THIS COURT SHOULD NOT ENTERTAIN THIS SUIT UNLESS THE WILLIAM BUCHANAN FOUNDATION IS MADE A PARTY

As shown in the foregoing point, The William Buchanan Foundation is an indispensable party to this suit in that it asserts a right which is inseparably connected with the rights asserted by the parties herein.

In *California v. Southern Pacific Company*, 157 U.S. 229 (1894), the Court said at pp. 249 and 257:

> "It was held in Mallow v. Hinde, 12 Wheat. 193, 198, that where an equity cause may be finally decided between the parties litigant without bringing others before the court who would, generally speaking, be necessary parties, such parties may be dispensed with in the Circuit Court if its process cannot reach them or if they are citizens of another State; but if the rights of those not before the court are inseparably connected with the claim of the parties litigant so that a final decision cannot be made between them without affecting the rights of the absent parties, the peculiar constitution of the Circuit Court forms no ground for dispensing with such parties. And the court remarked: 'We do not put this case upon the ground of jurisdiction, but upon a much broader ground,

which must equally apply to all courts of equity whatever may be their structure as to jurisdiction. We put it upon the ground that no court can adjudicate directly upon a person's right, without the party being actually or constructively before the court.'

"...

"... We have no hesitation in holding that when an original cause is pending in this court to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and finality which should characterize such an adjudication to proceed in the absence of parties whose rights would be in effect determined, even though they might not be technically bound in subsequent litigation in some other tribunal."

The axiom that there can be no dispensing with indispensable parties is so elementary as to require mere statement without discussion. 24 Minn. L. Rev. 703, 704.

III.

UNDER ESTABLISHED RULES FOR PROPER ALIGNMENT OF PARTIES, THE WILLIAM BUCHANAN FOUNDATION, IF A PARTY TO THIS SUIT, WOULD BE ALIGNED AS CO-COMPLAINANT

Since the prime object of all litigation is to establish a right asserted by the plaintiff or to sustain a defense set up by the party pursued,[8] the determi-

[8] *Tyler v. Judges of Court of Registration*, 179 U.S. 405, 406 (1900).

nant factor in aligning parties is the ascertainment of the interest of the parties. The general rule has been stated to be that "the action should be brought in the name of the party whose legal right has been affected, against the party who committed or caused the injury, or by or against his personal representative."[4] Therefore parties should be aligned as plaintiffs or defendants according to their interest in the right asserted against the ones who are alleged to have injured them in such right.[5]

The State of Arkansas in its Complaint asserts a right to five hundred thousand dollars under the contract of The University of Arkansas with The William Buchanan Foundation. The Foundation, in the suit pending in the 102nd District Court of Bowie County, Texas, asserts, in effect, that that contract is valid and that the State of Arkansas is entitled to five hundred thousand dollars. The State of Arkansas in its Complaint asserts that the Attorney General of the State of Texas has injured the State of Arkansas in its right to five hundred thousand dollars. The Foundation, in the suit pending in the 102nd District Court of Bowie County, Texas, has, in effect, concurred in this assertion. Both the Foundation and The University of Arkansas take the position, as opposed to that taken by the defendants herein, that the primary beneficiaries of the charitable trust created by William Buchanan are not limited to the residents of Bowie County, Texas, and of the adjoining counties. Therefore, under recognized rules for the proper alignment of parties, The

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[4] Id. p. 407 quoting Chitty, *Pleading*, p. 1.

[5] 6 *Cyclopedia of Federal Procedure*, 2nd Ed., 1943, ch. 21, § 2128, p. 195.

William Buchanan Foundation, if a party to this suit, would be aligned as a co-complainant.

IV.

The William Buchanan Foundation Cannot Be Made Co-Complainant In This Suit Absent The Consent Of The State Of Texas

The original jurisdiction of this Court with respect to suits in which a state is a party is limited not only by the Eleventh Amendment to the Constitution which precludes suit against a state "by citizens of another state, or by citizens or subjects of any foreign state" but also by the principle of sovereign state immunity from suit which prevents suit against a state by its own citizens absent the consent of the state.* In *Ex Parte State of New York, No. 1*, 256 U. S. 490 (1920), at p. 497, this Court said:

> "That a state may not be sued without its consent is a fundamental rule of jurisprudence, having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by citizens of another state, or by citizens or subjects of a foreign state, because of the 11th Amendment; and not even one brought by its own citizens, because of the fundamental

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* 1 *Cyclopedia of Federal Procedure*, 2nd Ed., 1943, ch. 2, § 85, p. 173; *California v. Southern Pacific Co.*, 157 U.S. 229 (1894); *Duhne v. New Jersey*, 251 U.S. 311 (1920); *Hans v. Louisiana*, 134 U.S. 1 (1889).

rule of which the amendment is but an exemplification."

The William Buchanan Foundation is a private corporation, organized and existing under the laws of the State of Texas, having its domicile and principal place of business in Bowie County, Texas. It is, of course, well settled that a corporation created by a State is a citizen of the State within the meaning of those provisions of the Constitution and statutes of the United States which define the jurisdiction of the federal courts.[1] This being so, the Foundation cannot be made co-complainant in this suit since the State of Texas has not consented to be sued.

V.

THE WILLIAM BUCHANAN FOUNDATION CANNOT BE MADE A CO-COMPLAINANT IN THIS SUIT BECAUSE JURISDICTION IS DEPENDENT UPON THE STATE OF ARKANSAS BEING THE MOVING PARTY

In *California v. Southern Pacific Company*, 157 U.S. 229 (1894), California, by leave of Court, filed a bill in equity against the Southern Pacific Company. The bill was dismissed because of the absence of indispensable parties. The City of Oakland, one of said parties, had moved for leave to be joined by

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[1] *Paul v. Virginia*, 8 Wall. 168, 178 (1868); *Pennsylvania v. Wheeling Bridge Co.*, 13 How. 518 (1851); *Kansas Pacific Railroad v. Atchison-Topeka & Santa Fe Railroad*, 112 U.S. 414 (1884); *Wisconsin v. Pelican Insurance Co.*, 127 U.S. 265, 287 (1888).

intervention as co-complainant. In explaining why the motion was denied, the Court said at p. 256:

> ". . . As original jurisdiction only subsisted in that the State was party, and the moving party, (Eleventh Amendment; Hans v. Louisiana, 134 U.S. 1,) the motion of the city was denied."

So, too, in this case, The William Buchanan Foundation could not be made a co-complainant because jurisdiction is dependent upon the State of Arkansas being the moving party.

VI.

THE WILLIAM BUCHANAN FOUNDATION CANNOT BE MADE A PARTY DEFENDANT IN THIS SUIT

A. The William Buchanan Foundation is an indispensable party plaintiff or co-complainant.

Although it has been said that under equitable principles parties have no fixed standing as plaintiff and defendant, but may be realigned for jurisdictional purposes, there can be, nevertheless, a situation in which a certain person should be on the plaintiff side of the record.*

Such is the situation presented by the facts of this case. In the suit filed in the 102nd District Court of Bowie County, Texas, the State of Texas has challenged the authority of The William Buchanan Foundation to enter into the contract with the University

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* 6 *Cyclopedia of Federal Procedure*, 2nd Ed., 1943, ch. 21, §§ 2128, 2129, pp. 194-196.

of Arkansas. The interests of the State of Texas and of the Foundation are in direct conflict. Moreover, the rights asserted by the State of Arkansas are dependent upon the Foundation's power to enter into the contract. Clearly, the position of the Foundation in this suit is that of an indispensable plaintiff or co-complainant.

B. Joinder of The William Buchanan Foundation as a party defendant would oust this Court of jurisdiction.

This Court has said, on more than one occasion,* that in ascertaining whether it has original jurisdiction of a particular case, it will look to the actualities of the situation.

If The William Buchanan Foundation were made a party defendant in this suit, the principle of sovereign immunity from suit, discussed supra in Point IV, would be violated because the Foundation would actually be asserting a right against the State of Texas, to which assertion the State has not consented. As stated in *Duhne v. New Jersey*, 251 U. S. 311 (1920), at page 313, "the whole sum of the judicial power granted by the Constitution to the United States does not embrace the authority to entertain a suit brought by a citizen against his own state without its consent." Therefore, making the Foundation a defendant in this suit would result in ousting the jurisdiction of this Court.

In *California v. Southern Pacific Company*, 157

* *Louisiana v. Texas*, 176 U.S. 1 (1899); *Massachusetts v. Missouri*, 308 U.S. 1 (1939).

U. S. 229 (1894), the Court held that the original jurisdiction of this Court did not extend to a suit between a State on the one side and citizens of another state and citizens of the same state on the other side. California's bill in equity, filed by leave of Court, named only the Southern Pacific Company as defendant. The Court held that both the City of Oakland and the Oakland Water Front Company were indispensable parties. The City of Oakland had been denied a motion for leave to be joined by intervention as a co-complainant on the ground that original jurisdiction could exist only by virtue of a state being the moving party. In holding that the indispensable parties could not be made defendants, the Court said at pp. 258 and 261-262:

> "Under the Constitution the cases in which a State may be a party are those between two or more States; between a State and citizens of another State; between a State and foreign States, citizens, or subjects; and between the United States and a State, as held in United States v. Texas, 143 U.S. 621. By the Constitution and according to the statute this court has exclusive jurisdiction of all controversies of a civil nature where a State is a party, but not of controversies between a State and its own citizens, and original but not exclusive jurisdiction of controversies between a State and citizens of another State or aliens.
>
> ". . .
>
> "It was held at an early day that Congress could neither enlarge nor restrict the original jurisdiction of this court, Marbury v. Madison, 1 Cranch, 137, 173, 174, and no attempt to do

so is suggested here. The jurisdiction is limited and manifestly intended to be sparingly exercised, and should not be expanded by construction. What Congress may have power to do in relation to the jurisdiction of Circuit Courts of the United States is not the question, but whether, where the Constitution provides that this court shall have original jurisdiction in cases in which the State is plaintiff and citizens of another State defendants, that jurisdiction can be held to embrace a suit between a State and citizens of another State and of the same State. We are of opinion that our original jurisdiction cannot be thus extended, and that the bill must be dismissed for want of parties who should be joined, but cannot be without ousting the jurisdiction."[10]

The William Buchanan Foundation, a private corporation, duly organized and established under the laws of the State of Texas, is a citizen of the State of Texas." Again looking to the actualities of the situation presented by this case, making the Foundation a party defendant would not, of course, change the Foundation's interest in this suit. That interest is diametrically opposed to the interest asserted by the State of Texas. This court has no original jurisdiction to determine the issues between the State of Texas and a citizen of the State of Texas.

Complainant cites *Texas v. Florida*, 306 U.S. 398 (1939) as authority for making the Foundation a

[10] *Paul v. Virginia*, 8 Wall. 168, 178 (1868); *Pennsylvania v. Wheeling Bridge Co.*, 13 How. 518 (1851); *Kansas Pacific Railroad v. Atchison Topeka & Santa Fe Railroad*, 112 U.S. 414 (1884); *Wisconsin v. Pelican Insurance Co.*, 127 U.S. 265, 287 (1888).

party defendant in this suit." In that case an original suit, in the nature of a bill of interpleader, was brought to determine the true domicile of a decedent as the basis for rival claims of four states for death taxes upon his estate. In addition to the State of Florida, New York and the Commonwealth of Massachusetts, the decedent's wife, Mabel Harlow Green, and the decedent's sister Hetty Sylvia Ann Howland Green, both alleged to be residents of New York, were made defendants. The answer of decedent's wife admitted that he was domiciled in Texas and asserted that under Texas law she owned substantially one-half of the estate acquired by decedent after their marriage free and clear of death taxes. Pursuant to stipulation showing that she had released all interest in decedent's estate, the suit was dismissed as to her. Decedent's sister filed an answer denying that Green was domiciled in Texas and asking the Court to determine in which of the defendant states he was domiciled for the purposes of taxation. Thus the one remaining individual defendant was not a citizen of the plaintiff state nor was she taking issue with any of the defendant states. This being so, the real issue in the suit was between states, and as the Court said, "the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the states . . . [were] properly made parties defendant." Here The William Buchanan Foundation is not a necessary or proper party but is an indispensable party. The basic controversy is not between the State of Arkansas and

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[11] Brief on Motion for Leave to File Bill of Complaint for Complainant, p. 16.

the State of Texas but between the State of Texas and the Foundation. *Texas v. Florida*, supra, is therefore not authority for making the Foundation a party defendant in this suit.

VII.

Even If The William Buchanan Foundation Could Properly Be Joined As A Party Defendant, This Court Should Decline To Exercise Jurisdiction As A Matter Of Sound Equitable Discretion

A. This Court's original jurisdiction of controversies between a State on the one side and another State and a citizen of that State on the other is not mandatory.

Section 1251 of Title 28, U.S.C., provides, in part, as follows:

> "(a) The Supreme Court shall have original and exclusive jurisdiction of:
>
> (1) All controversies between two or more States;
>
> (2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations.
>
> (b) The Supreme Court shall have original but not exclusive jurisdiction of:
>
> . . .
>
> . . .
>
> (3) All actions or proceedings by a State against the citizens of another State
>
> . . ."

This court has original and exclusive jurisdiction only of controversies involving those parties specifically enumerated in Subsection (a). It's jurisdiction over the types of cases ennumerated in Subsection (b) is original but not exclusive.

The exercise of original jurisdiction in cases ennumerated in Article III, Section 2, Clause 2 of the Constitution of the United States "is not mandatory in every case."[12]

If The William Buchanan Foundation were made a party defendant in this suit, it would then be a case between a State on the one side and another State and a citizen of the latter state on the other.

Even if this court concluded that the William Buchanan Foundation could be made a party defendant in this case without ousting the original jurisdiction of this court, defendants submit that jurisdiction over the hybrid parties would not be exclusive and hence, not mandatory.

B. Considerations of convenience, efficiency and justice point to the 102nd District Court of Bowie County, Texas.

This Court's original jurisdiction of controversies between a State on the one side and another State and a citizen of that State on the other not being mandatory, this Court should decline to exercise jurisdiction because the interests of convenience, efficiency and justice will be better served by full devel-

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[12] *Georgia v. Pennsylvania Ry.*, 324 U.S. 439, 464 (1945); *Georgia v. Chattanooga*, 264 U.S. 472, 483 (1924); *Oklahoma v. Cook*, 304 U.S. 387, 396 (1938); *Massachusetts v. Missouri*, 308 U.S. 1, 19 (1939).

opment of the evidence in the 102nd District Court of Bowie County, Texas, with customary appeal, than before a master in an original proceeding in this Court.

In numerous decisions this Court has recognized the discretionary right of a court in the interests of convenience, efficiency and justice, to withhold the exercise of the jurisdiction conferred upon it where there is another suitable forum in which the cause may be determined. *Georgia v. Pennsylvania Ry.*, 324 U. S. 439, 464 (1945); *Massachusetts v. Missouri*, 308 U.S. 1, 19 (1939); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504 (1947); *Koster v. Lumbermens Mut. Casualty Co.*, 330 U.S. 518, 527 (1947); *Kansas City Southern Ry. v. United States*, 282 U.S. 760 (1931).

In *Massachusetts v. Missouri*, supra at page 19, the Court said:

> "We have observed that the broad statement that a court having jurisdiction must exercise it (See *Cohens v. Virginia*, 6 Wheat 264, 404) is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum. *Canada Malting Co. v. Paterson Shipbuilders*, 285 U.S. 413, 422; *Rogers v. Guaranty Trust Co.*, 288 U.S. 123, 130, 131. Grounds for justifying such a qualification have been found in 'considerations of convenience, efficiency and justice' applicable to particular classes of cases. *Rogers v. Guaranty Trust Co.*, supra . . ."

The following was said in *Rogers v. Guaranty Trust Co. of New York*, supra, at page 131:

". . . it safely may be said that jurisdiction will be declined whenever considerations of convenience, efficiency and justice point to the courts of the state of the domicile as appropriate tribunals for the determination of the particular case . . ."

In *Koster v. Lumbermens Mut. Casualty Co.*, supra, at page 527, it is said: ". . . the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice."

The evidence, documentary and otherwise, can be brought more easily before the District Court of Bowie County, Texas, such court being in proximity to the witnesses and documents as well as counsel for all parties. Moreover, the execution of the duty of the Attorney General to see that all trusts or gifts for charitable purposes are faithfully administered and fully effectuated will be seriously hampered if this Court sets a precedent of exercising jurisdiction in such instances.

Hundreds of charitable trusts are in existence in the State of Texas, alone. The task and expense of enforcement is not insignificant. It should not be assumed that instances in which questionable donations of the trust funds are made to agencies of other states are rare, nor that it will only occasionally be necessary to resort to the courts for a construction of the powers conferred in the trust instrument. The precedent which will be set if this Court fails to avail itself of its discretionary right to withhold the exercise of its jurisdiction will open its doors to numerous attempts to forestall the execution of the duties of those state officials charged

with enforcement of charitable trusts, will add to the already voluminous work of this Court, and will tend to take jurisdiction from the state courts which should properly enforce such trusts.

The above factors coupled with the fact that administration of public trusts may be more expeditiously carried out under the supervision of a court in proximity to the place of such administration are important considerations in determining whether this Court should take jurisdiction of this case or exercise its discretionary right to decline jurisdiction, since it is proper for the Court to consider "all other practical problems that make trial of a case easy, expeditious and inexpensive."[13]

C. The principle of comity which obtains between courts of concurrent jurisdiction forbids interference by this Court with the suit which is pending in the 102nd District Court of Bowie County, Texas.

As early as 1793, severe restrictions upon the power of federal courts to interfere with the actions and proceedings before state courts were imposed by Congress.[14] Section 2283, Title 28, of the United States Code provides for such restrictions as follows: "A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or

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[13] *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

[14] *International Union of Operating Engineers, Locals No. 542, 542-A, 542-B v. William D. Baker Co.*, 100 F. Supp. 773 (E. D. Pa., 1951).

effectuate its judgments." The prohibition embodied in this Act has been held to be the adoption by Congress of what the federal and state courts "had already found to be good manners,"[15] based on the principles of comity.

Pursuant to this Act, the federal courts have held that a federal court may enjoin state court proceedings only when it has acquired jurisdiction before the state court has obtained jurisdiction;[16] that the prohibition extends to proceedings which necessarily have an injunctive effect as well as to injunctions directly restraining state court proceedings;[17] and that the prohibition prevents interference by a federal court with an action for injunction brought in a state court even though exclusive jurisdiction in the federal court was alleged.[18]

In *Oklahoma Packing Company v. Oklahoma Gas & Electric Co.*, 309 U.S. 4 (1939), at pages 8 and 9, this Court said:

> "The present suit, therefore, is one for an injunction 'to stay proceedings' previously begun in a state court. The decree below is thus within the plain interdiction of an Act of Congress, and not taken out of it by any of the exceptions which this Court has heretofore engrafted upon a limitation of the power of the federal courts dating almost from the beginning

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[15] *In re Walker Grain Co.*, 294 F. 951 (N. D. Tex., 1923).

[16] *Puget Sound Power & Light Co. v. Asia*, 277 Fed. 1 (C.C.A. 9th, 1922), cert. den., 258 U.S. 619.

[17] *Harrison v. Triplex Gold Mines, Ltd.*, 33 F. 2d 667, 672 (C.C.A. 1st, 1929).

[18] *International Union of Operating Engineers, Locals No. 542, 542-A, 542-B v. William D. Baker Co.*, 100 F. Supp. 773 (E. D. Pa., 1951).

> of our history and expressing an important Congressional policy—to prevent needless friction between state and federal courts. . . . (citing cases). That the injunction was a restraint of the parties and was not formally directed against the state court is immaterial. Hill v. Martin, 296 U.S. 383, 403, 56 S. Ct. 278, 80 L. Ed. 293."

Complainant asks this Court to enjoin further proceedings in the 102nd District Court of Bowie County, Texas, by the Attorney General of the State of Texas. The Complaint shows upon its face that said suit in the Bowie County District Court, involving the identical facts, the identical parties and the identical questions of law is now pending and was pending at the time complainant filed its Motion for Leave to File Bill of Complaint in this Court.

For this Court to assert jurisdiction in such an instance would be in direct contravention of an Act of Congress and former decisions of this Court which prohibit interference with such state court proceedings by the federal courts.

As held in *Oklahoma Packing Company v. Oklahoma Gas & Electric Co., supra,* the fact that the Bill is to enjoin the parties to the suit and is not to enjoin the state court directly does not take this Complaint but of the prohibition against interference by the federal courts.

Complainant further alleges that the District Court of Bowie County, Texas, is without jurisdiction in this suit. But even where, as here, it is alleged that exclusive jurisdiction is in a federal court, in-

terference with a suit in a state court is within the prohibition."[19] Furthermore, this Court should not presume that the District Court of Bowie County will proceed without regard to the question of jurisdiction. This principle is asserted as follows in *United Electrical Radio & Machine Workers of America v. Westinghouse Electric Corporation*, 65 F. Supp. 420 (E. D. Pa., 1946):

> "Moreover, whether the particular proceeding is, in whole or in part, one within the jurisdiction of the state court, and whether that court has power to grant the remedy prayed for, are questions which may be capably determined by that court, and error is a matter of appellate review. The question of jurisdiction, if at all involved, is appropriately one for the decision of the state court and could manifestly be presented and determined in the action there. *Kohn v. Central Distributing Co.*, 1939, 306 U.S. 531, 534, 509 S. Ct. 689, 83 L. Ed. 965."

Therefore it is submitted that even if The William Buchanan Foundation could properly be joined as a party defendant, this Court, in the exercise of judicial restraint, should refuse to interfere with the suit pending in the 102nd District Court of Bowie County, Texas, and decline to exercise jurisdiction.

CONCLUSION

For all the foregoing reasons defendants strongly

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[19] *H. J. Heinz Co. v. Owens*, 189 F. 2d 505 (C.C.A. 9th, 1951).

urge that the motion for leave to file the Complaint should be denied.

Respectfully submitted,

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June, 1952.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. _____, Original

STATE OF ARKANSAS,
Complainant,

v.

STATE OF TEXAS AND JOHN BEN SHEPPERD,
Attorney General of Texas,
Defendants.

RETURN OF DEFENDANTS TO RULE TO SHOW CAUSE

JOHN BEN SHEPPERD
Attorney General of the
State of Texas

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Assistant Attorneys General

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STATE OF TEXAS AND JOHN BEN SHEPPERD,
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Defendants.

RETURN OF DEFENDANTS TO RULE TO SHOW CAUSE

In response to the rule to show cause why leave to file the complaint tendered herein should not be granted, the defendants say:

I.

The William Buchanan Foundation, a private corporation organized and existing under the laws of the State of Texas, having its domicile and principle place of business in Bowie County, Texas, is an indispensable party to this suit.

On the 9th day of October, 1923, William Buchanan, a resident of Texarkana, Bowie County, Texas, executed a trust instrument creating "The William Buchanan Foundation," a charitable trust. This charitable enterprise was to be administered in Bowie County, Texas, in accordance with the provisions of said trust instrument. A copy of this instrument is attached to Complainant's Motion for Leave To File Complaint as "Exhibit A" at p. 17. Pursuant to the provisions of said trust instrument, The William Buchanan Foundation was duly incorporated under the laws of the State of Texas.

A determination of the validity of the contract between The William Buchanan Foundation and the University of Arkansas, necessitates an interpretation of the trust instrument and a determination of the trustees' power to enter into said contract.

II.

This Court should not entertain this suit unless The William Buchanan Foundation is made a Party hereto.

III.

Under established rules for proper alignment of parties, The William Buchanan Foundation, if a party to this suit, would be aligned as co-complainant.

The Trustees of The William Buchanan Foundation have taken the position in the suit filed in the 102nd District Court of Bowie County, Texas, by

the Attorney General of the State of Texas against the Foundation that the primary beneficiaries of the charitable trust created by William Buchanan are not limited to the residents of Bowie County, Texas, and of counties adjoining Bowie County, Texas, but that they may be determined at said trustees' discretion to the exclusion of the residents of Bowie and adjoining counties. (A copy of Defendant's Original Answer filed in said suit is attached hereto and incorporated herein as "Exhibit A".) Likewise in that suit they contend that the charitable institutions, agencies, means and activities authorized by the trust instrument need not be established, maintained, pursued and carried out in Bowie County, Texas, but may be established, maintained, administered, pursued and carried out in any portion of the United States or of the world.

Defendants herein, the State of Texas and John Ben Shepperd, Attorney General of the State of Texas, are convinced and have alleged in their first amended original petition filed in the 102nd District Court of Bowie County, Texas, (see Complainant's Motion for Leave To File Complaint, p. 52) that the trust instrument executed by William Buchanan is plain in its direction that the primary beneficiaries of the trust are the residents of Bowie County, Texas, and of counties adjoining Bowie County, Texas, and that the charitable institutions, agencies, means and activities contemplated by said instrument be established, maintained, administered, pursued and carried out in Bowie County, Texas.

Thus, the position of The William Buchanan Foundation is the same as that taken by the State

of Arkansas. Therefore, if a party to this suit, the Foundation should be aligned as co-complainant.

IV.

Absent the consent of the State of Texas, The William Buchanan Foundation cannot be made a co-complainant in this suit.

V.

The William Buchanan Foundation cannot be made a co-complainant in this suit because jurisdiction is dependent upon the State of Arkansas being the moving party.

VI.

The William Buchanan Foundation cannot be joined as a party defendant in this suit because:

A. The William Buchanan Foundation is an indispensable party plaintiff or co-complainant.

B. Joinder of The William Buchanan Foundation as a party defendant would oust this Court of Jurisdiction.

VII.

Even if The William Buchanan Foundation could properly be joined as a party defendant, this Court should decline to exercise jurisdiction as a matter of sound equitable discretion because:

A. This Court's original jurisdiction of controversies between a State on the one side and

another State and a citizen of that State on the other is not mandatory.

B. Considerations of convenience, efficiency and justice point to the 102nd District Court of Bowie County, Texas.

C. The principle of comity which obtains between courts of concurrent jurisdiction forbids interference by this Court with the suit which is pending in the 102nd District Court of Bowie County, Texas.

WHEREFORE, the defendants having shown cause, ask that the Rule be discharged and that leave to file the complaint be denied.

Respectfully Submitted,

JOHN BEN SHEPPERD
Attorney General of the
State of Texas

WILLIAM H. HOLLOWAY

MARIETTA McGREGOR CREEL
Assistant Attorneys General

Attorneys for Defendants.

STATE OF TEXAS
COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared William H. Holloway and Marietta McGregor Creel, Assistant Attorneys General of the State of Texas, who being duly sworn, depose and say: That they have read the foregoing Return of Defendants to Rule to Show Cause, that

they know the Contents thereof, and that the statements of fact contained therein are true and correct.

WILLIAM H. HOLLOWAY

MARIETTA McGREGOR CREEL

Subscribed and sworn to before me this_____ day of June, 1953.

Notary Public in and for
Travis County, Texas

My commission expires:

"EXHIBIT A"

No. 010437-A

IN THE 102ND DISTRICT COURT
OF BOWIE COUNTY, TEXAS

THE STATE OF TEXAS

vs.

THE WILLIAM BUCHANAN FOUNDATION,
A PRIVATE CORPORATION, ET AL.

ORIGINAL ANSWER OF THE DEFENDANT
WILLIAM BUCHANAN FOUNDATION

TO SAID HONORABLE COURT:

William Buchanan Foundation, a private corporation, answers the Plaintiff's Original Petition filed herein as follows:

I.

Said petition shows on its face that the plaintiff has failed to join an indispensable party, to wit, the University of Arkansas. It affirmatively appears

that the defendants have agreed to contribute Five Hundred Thousand Dollars ($500,000.00) to the University of Arkansas, to be used for the construction of a floor in the new teaching hospital being built in Little Rock, Arkansas. The petition tenders the issue that the beneficiaries of the trust are limited to residents of Bowie County, Texas, and of adjoining counties and that the trustees have no authority to commit any of the trust funds outside of the territorial limits indicated; and plaintiff seeks an injunction to restrain this defendant and its trustees and agents from expending any further sums of money for the construction, furnishing or maintenance of buildings or institutions outside of Bowie County. The necessary effect of the relief sought and prayed for will be to annul the gifts to the University of Arkansas and this is to be done without even the joinder of the University of Arkansas, which cannot be done. This defendant prays in this connection that the suit be dismissed for failure to join the University of Arkansas or that the plaintiff be required to join the University of Arkansas.

II.

This defendant denies all and singular the allegations contained in plaintiff's said petition and demands strict proof of the same, and of this puts itself upon the country.

Having fully answered herein, this defendant prays that the suit against it be dismissed for failure to join a necessary party and, in the alternative,

that upon trial hereof all the relief prayed for be denied, and for general relief.

(Signed) CHARLES L. BLACK
Attorney for Defendant
The William Buchanan
Foundation

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FILED
AUG 31 1953
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, ~~1952~~ 1953

No. _____, Original

STATE OF ARKANSAS

Complainant

vs.

STATE OF TEXAS, ET AL.,

Defendants

REPLY BY THE STATE OF ARKANSAS TO THE DEFENDANTS' RETURN TO THE RULE TO SHOW CAUSE

TOM GENTRY,
Attorney General,
State of Arkansas.

Of Counsel:
H. S. YOCUM,
El Dorado, Arkansas;
W. W. SHARP,
Brinkley, Arkansas;
KAY MATTHEWS,
Little Rock, Arkansas;
E. J. BALL,
Fayetteville, Arkansas.

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Supreme Court of the United States

OCTOBER TERM, 1952

No. _____, Original

STATE OF ARKANSAS

Complainant

vs.

STATE OF TEXAS and JOHN BEN SHEPPARD,
Attorney General of Texas,

Defendants

REPLY BY THE STATE OF ARKANSAS TO THE DEFENDANTS' RETURN TO THE RULE TO SHOW CAUSE

On June 25, 1953 the defendants—the State of Texas and the Attorney General of the State of Texas—filed a return to this Court's rule to show cause why the motion of the State of Arkansas for leave to file the complaint should not be granted. In that return, and in their supporting brief, the defendants prayed that the rule be discharged and that leave to file the complaint be denied.

In reply thereto the State of Arkansas respectfully makes the following submission to this Court. In making this submission the State of Arkansas once more requests that leave to file the complaint be granted so that the State of Arkansas may have its day in court on the serious controversy which presenlty exists between the State of Arkansas and the State of Texas.

I.

LEAVE TO FILE SHOULD NOT BE DENIED BECAUSE OF THE ABSENCE OF THE WILLIAM BUCHANAN FOUNDATION AS A PARTY. THE WILLIAM BUCHANAN FOUNDATION IS NOT AN INDISPENSABLE PARTY TO THIS ACTION.

In their return the defendants have urged that the William Buchanan Foundation is an indispensable party to this action, and that leave to file the complaint should accordingly be denied because the William Buchanan Foundation has not been made a party.

In view of the nature of the cause of action set forth in the complaint, such a contention is without merit and is contrary to accepted principles of law. Under these accepted principles of law it is clear that the William Buchanan Foundation is not an indispensable party to this action.

The State of Arkansas is seeking judicial relief in this controversy in order to prevent the State of Texas from continuing a course of action which is inflicting grave injury upon the interests of the State of Arkansas. As is set forth in the complaint, the State of Arkansas through its instrumentality the University of Arkansas, entered into a contract with the William Buchanan Foundation whereby the Foundation became obligated to pay $500,000 toward the construction of a specially added pediatric floor in a new charity hospital to be constructed at the State of Arkansas Medical Center at Little Rock, Arkansas. This contract was valid when entered into; it is valid today. In reliance thereon the State of Arkansas has proceeded with the construction of the hospital and has in every way performed its part of the contract.

When the motion for leave to file the complaint was submitted to this Court, construction of this charity hospital at the State of Arkansas Medical Center had already reached the point where the funds agreed to be paid by the William Buchanan Foundation were due and payable. The reason why payment had not been made by the William Buchanan Foundation was that the State of Texas and its Attorney General, the defendants herein, had illegally and in violation of the rights of the complainant instituted an action in state court in Texas, contending that the contract was not a proper expenditure by the William Buchanan Foundation. This contention by the defendants was without legal justification: and it was based on purported interpretations and applications, likewise without legal justification, made by the defendants with respect to the trust indenture and the charter of the William Buchanan Foundation. The actions of the defendants constitute an unwarranted and unlawful interference by the defendants with valid contractual rights vested in the State of Arkansas, thus inflicting upon the State of Arkansas the grave and irreparable injury described in the complaint. Compare **Kentucky** v. **Indiana,** 281 U.S. 163, 50 S. Ct. 275 (1930); **Dyer** v. **Sims,** 341 U.S. 22, 71 S. Ct. 557 (1951).

In order to vindicate its rights and to protect its interests from this harm caused by the actions of the defendants, the State of Arkansas has asked leave to institute this action in the Supreme Court of the United States—which is the tribunal invested by the Constitution and the Judicial Code with the authority and the responsibility to determine actual cases and controversies arising between two States. The controversy which here exists between the State of Arkansas and the State of Texas is not hypothetical and abstract, but

real and immediate. The injury being inflicted upon the State of Arkansas by the State of Texas is not problematical or merely in future; it is presently being sustained and is drastic in its consequences. The actions of the State of Texas are wrongful and, as appears from the authorities cited in the complainant's brief in support of the motion the motion for leave to file, they are a proper subject for redress in this Court at the suit of the State of Arkansas. Without question they will "afford an adequate basis for relief according to accepted doctrines of the common law or equity systems of jurisprudence, which are guides to decision of cases within the original jurisdiction of this court." **Texas v. Florida**, 306 U.S. 398, 405, 59 S. Ct. 563 (1939).

The argument by the defendants that the William Buchanan Foundation is an indispensable party misconceives both the nature of the wrong alleged and the nature of the relief being sought. Beginning with the leading English case of **Lumley v. Gye**, 2 E. & B. 216, 118 Eng. Rep. 749 (Q.B. 1853), there has developed a general doctrine—which was quickly received into American law—that a plaintiff may obtain judicial relief against a defendant who, without legal justification, has interfered or is interfering with the plaintiff's contractual relations with a third person. Such judicial relief may be had at law or in equity, as appropriate in the particular case, and it is commonplace to find that the third person is not joined as a party to the action.[1] This doctrine in the law has been fully recognized by the

1. A vast number of illustrative cases is collected in Annotation, "Liability for Procuring Breach of Contract", 94 A.L.R. 43; Annotation, "Liability of One Who Induces or Causes Third Person Not to Enter Into or Continue a Business Relation with Another", 9 A.L.R. 2nd 228; Carpenter, "Interference with Contract Relations", (1928) 41 Harvard L. Rev. 728.

Supreme Court of the United States. Angle v. Chicago, St. Paul &c. Railway, 151 U.S. 1, 13-15, 14 S. Ct. 240 (1894); Bitterman v. Louisville & Nashville R.R., 207 U.S. 205, 28 S. Ct. 91 (1907); see also Dr. Miles Medical Co. v. Park & Sons Co., 220 U.S. 373, 394-95, 31 S. Ct. 376 (1911). It provides appropriate guidance in the present controversy.

In the cases referred to, the absence of the third person (in the present case this would be the William Buchanan Foundation) has presented no obstacle to granting relief to the plaintiff (here the State of Arkansas) against the defendant (here the State of Texas and its Attorney General) who was wrongfully interfering with the plaintiff's contractual relationship with the thrid person. Nor, as the Bitterman case demonstrates (207 U.S. at 220-22), has the absence of the third person prevented the Court from considering and rejecting on the merits a contention by the defendant that the plaintiff's contract with the third person was illegal.

Attention is also invited to cases in the highest courts of the States, holding that in an action to enjoin a defendant from wrongful interference with the plaintiff's contractual relationship with a third person, there exists a controversy between the plaintiff and the defendant which can properly be determined without the third party being a party to the suit. E. L. Husting Co. v. Coca Cola Co., 194 Wis. 311, 216 N.W. 833 (1927), 205 Wis. 356, 238 N.W. 626 (1931), cert. denied, 285 U.S. 538 (1932); Hansen v. Taylor Beverage & Candy Co., 227 Wis. 140, 277 N.W. 115 (1938); Nekol Co. v. Becker, 318 Mo. 292, 300 S.W. 1108 (1927); Alcazar Amusement Co. v. Mudd & Colley Amusement Co., 204 Ala. 509, 86 So. 209 (1920). In the last case cited the Supreme Court of Alabama held that (204 Ala. at 513):

> "The tortious wrong thus definitely threatened or consumated by a stranger to the contract is, in a distinctive sense, independent of the contract, though arising from the relation it establishes and the obligations it imposes; and hence the party whose rights under the contract are thus threatened may be entitled to the injunctive relief indicted, notwithstanding specific performance of the contract cannot be compelled because of the nature of the conrtact, or of the impracticability of judicial superintendence of its performance, or of the absence of jurisdiction over the other contracting party."

This line of cases has, moreover, been given favorable recognition by this Court in **National Licorice Co. v. Labor Board**, 309 U.S. 350, 363-64, 60 S. Ct. 569 (1940).

Particularly in the light of these authorities, the defendants' suggestion that the William Buchanan Foundation is an indispensable party is without merit.

What the complainant State of Arkansas is seeking is a judicial determination of its existing controversy with the State of Texas, so that the interference by the State of Texas with the contractual rights of the State of Arkansas will be brought to an end. It may well be true that the William Buchanan Foundation will be interested in the outcome of this controversy between the State of Arkansas and the State of Texas. But justiciable controversies between States—whether they are over boundaries, or over water rights, or over contract rights, or involve some other subject matter—frequently are controversies in which third persons have some definite interest, an interest which would be sufficient to support an application for intervention if made. See **Oklahoma v. Texas**, 253 U.S. 465, 471, 40 S. Ct. 580 (1920) and 258 U.S. 574, 581, 42 S. Ct. 406 (1922). That interest does not make them indispensable

parties (compare **Georgia** v. **Pennsylvania R. Co.**, 324 U.S. 439, 463-64, 65 S. Ct. 716 (1945); nor does their absence defeat the exclusive jurisdiction of the Supreme Court, 28 U.S.C. § 1251 (a) (1), to determine the controversy which has arisen between the States.

There is no necessity that the William Buchanan Foundation be joined as a party to this action, and the existing controversy between the two States can be finally resolved without such joinder being required.

California v. **Southern Pacific Co.**, 157 U.S. 229, 15 S. Ct. 591 (1895), cited by the defendants, has no application here. That was an action brough by the State of California against a citizen of another State and involved an extremely complex controversy over title to certain waterfront land in Oakland, California. Under the specific circumstances of the case the Court concluded that the various land rights were so inextricably interwoven that the City of Oakland and the Oakland Water Front Company were parties without whose presence the Court should not proceed. The cause of action was entirely different in its nature from that alleged in the present case; the position of the respective parties was different. Moreover, the controversy there was not, like the present one, within the exclusive jurisdiction of the Supreme Court; it was clear that the State of California had a judicial remedy readily available in another forum.

II.

THE DEFENDANTS HAVE RAISED VARIOUS QUESTIONS CONCERNING THE LEGAL CONSEQUENCES WHICH WOULD RESULT IF THE WILLIAM BUCHANAN FOUNDATION WERE A PARTY TO THIS ACTION. THE WILLIAM

BUCHANAN FOUNDATION IS NOT A PARTY TO THIS ACTION, AND ACCORDINGLY THESE QUESTIONS ARE NOT RELEVANT TO DECIDING THE MOTION FOR LEAVE TO FILE THE COMPLAINT.

In their return and supporting brief the defendants have sought to raise a number of questions concerning the legal consequences which would result if the William Buchanan Foundation were a party to this action. These questions could each be dealt with if they were ever to arise in this proceeding. But at the present time there is a simple response to them all. The William Buchanan Foundation is not a party to this proceeding. The parties are the State of Arkansas, as complainant, and the State of Texas and its Attorney General as defendants. The Court would be canvassing an issue wholly hypothetical and abstract, were it to consider what the situation might be if the William Buchanan Foundation were also a party. Accordingly these questions are not relevant to the motion before the Court for leave to file the complaint.

It may be noted in passing, however, that the prior rulings of this Court indicate that no jurisdictional problems would arise if the William Buchanan Foundation were to become an additional party. Thus in **Texas v. Florida**, 306 U.S. 398, 405, 59 S. Ct. 563 (1939) the Court held that:

> "The present suit is between states, and the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the states are properly made parties defendant."

See also **Oklahoma v. Texas**, 253 U.S. 465, 471, 40 S. Ct. 580 (1920) and 258 U.S. 574, 581, 42 S. Ct. 406 (1922);

Kentucky v. Indiana, 281 U.S. 163, 173-74, 50 S. Ct. 275 (1930).

III.

NO BASIS EXISTS FOR DENYING LEAVE TO FILE THE COMPLAINT AS A MATTER OF SOUND EQUITABLE DISCRETION. MOREOVER, TO DENY LEAVE ON SUCH GROUNDS WOULD BE TO UNDERMINE THE ACTION OF CONGRESS IN VESTING EXCLUSIVE JURISDICTION IN THE SUPREME COURT.

The defendants in their return and supporting brief have suggested that some factors exist which might make it appropriate, as a matter of sound equitable discretion, for this Court to decline to exercise its jurisdiction in this case. In view of the grave injury being inflicted upon the State of Arkansas as a result of the unjustified and unlawful actions of the State of Texas, it is believed that an assessment of equitable factors would require this Court to assume jurisdiction over the controversy promptly, even if it were a controversy in which the State of Arkansas could also look for relief against the State of Texas in some other forum.

But this controversy is wholly unlike the cases in which this Court has determined, on discretionary grounds, that the complainant State should be remitted to another forum. **Massachusetts** v. **Missouri**, 308 U.S. 1, 17-20, 60 S. Ct. 39 (1939); compare **Georgia** v. **Chattanooga**, 264 U.S. 472, 44 S. Ct. 369 (1924); **Oklahoma** v. **Cook**, 304 U.S. 387, 58 S. Ct. 954 (1938). Those have all been cases where the complainant State sought to bring an original action in the Supreme Court against citizens of another State; and in such cases the Supreme Court is given "original but not exclusive" juris-

diction. 28 U.S.C. § 1251 (b) (3). The present controversy between the State of Arkansas and the State of Texas, on the other hand, is a controversy between two States, and the Judicial Code expressly provides that the original jurisdiction of the Supreme Court shall be "exclusive" in "all controversies between two or more States". 28 U.S.C. § 1251 (a) (1). In the light of this statutuory direction, it would be an abuse of discretion for this Court to decline to entertain a justiciable case or controversy which, like this one, has arisen between two States. As the Court stated in **Dyer** v. **Sims**, 341 U.S. 22, 28, 71 S. Ct. 557 (1951):

> "A State cannot be its own ultimate judge in a controversy with a sister State. To determine the nature and scope of obligations as between States, whether they arise through the legislative means of compact or the 'federal common law' governing interstate controversies (**Hinderlider** v. **La Plata Co.**, 304 U.S. 92, 110), is the function and duty of the Supreme Court of the Nation."

IV.

ARGUMENTS CONCERNING THE PRECISE SCOPE OF RELIEF WHICH SHOULD BE GRANTED ARE NOT RELEVANT TO DECIDING THE MOTION FOR LEAVE TO FILE THE COMPLAINT.

The defendants in their return and supporting brief have suggested, as a possible ground for this Court to decline to exercise its jurisdiction, that the granting of injunctive relief to the State of Arkansas would be contrary to 28 U.S.C. § 2283, which reads as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a State court ex-

> cept as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Even if it be assumed that this statutory provision is applicable to original actions in the Supreme Court, it is the position of the State of Arkansas that the complaint in the present case makes a sufficient showing that injunctive relief by the Supreme Court is "necessary in aid of its jurisdiction", in order to protect the exclusive jurisdiction vested in the Supreme Court by law. Accordingly, the prayer for injunctive relief is consistent with this statute.

But apart from the prayer for injunctive relief, the complaint likewise prays for a decree sustaining the rights of the State of Arkansas, as against the adverse actions and contentions of the defendants, and for such other and further relief as the Court may deem proper. The justiciable case and controversy set forth in the complaint becomes no less a case or controversy because the Court might, in the end, determine that injunctive relief is not required. As the Court stated in **Texas** v. **Florida**, 306 U.S. 398, 412, 59 S. Ct. 563 (1939):

> "While courts of equity in such suits may and frequently do give incidental relief by injunction to secure the full benefits of the adjudication and to terminate the litigation in a single suit, they are not bound to do so and their adjudication of the conflicting claims is not any the less effective as res judicata because not supplemented by injunction. We do not doubt that when the equity powers of the Court have been invoked it has power in its discretion to give such incidental relief by way of injunction as will make its determination the effective means of avoiding risk of loss to any of the parties by reason of the asserted multiple tax liability. But the plenary effect of its decision as res

judicata, and considerations of convenience in the levying of the tax by usual state procedure, make it unnecessary and undesirable that the Court should proceed beyond adjudication. The fact that the Court, for reasons of policy or convenience, does not exercise the power which it possesses and which has been traditionally exercised in like cases between private suitors does not deprive the suit of its character as a case or controversy cognizable by the Court in an original suit."

Leave to file the complaint should therefore be granted regardless of whether the precise scope of the relief ultimately granted would include an injunction (as the complainant believes it should), or would be limited to a specially framed decree which the Court might consider sufficient to vindicate the complainant's rights against the defendants (**Texas v. Florida**, supra; **Kentucky v. Indiana**, 281 U.S. 163, 175, 50 S. Ct. 275 and 281 U.S. 700, 50 S. Ct. 406 (1930)), or would take the form of a declaratory judgment pursuant to 28 U.S.C. § 2201.

CONCLUSION

For the foregoing reasons, as well as for those set forth in the motion for leave to file the complaint and in the complainant's brief in support thereof, this Court should grant leave to file the complaint and should proceed with the determination of the controversy. The State of Texas in the past has been given abundant opportunity to maintain in this Court original actions which that State deemed necessary to institute for the protection of its interests and the vindication of its legal rights. See, for example, **Texas v. Florida**, 306 U.S. 398, 59 S. Ct. 563 (1939); **Texas v. White**, 7 Wall.

700 (1868). In the present proceeding the State of Arkansas, having become involved in a clearly justiciable controversy with the State of Texas, believes it is entitled to a like oportunity.

Respectfully submitted,

TOM GENTRY,
Attorney General,
State of Arkansas

Of Counsel:

H. S. YOCUM,
El Dorado, Arkansas;

W. W. SHARP,
Brinkley, Arkansas;

KAY MATTHEWS,
Little Rock, Arkansas;

E. J. BALL,
Fayetteville, Arkansas.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. –, Original

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TEXAS AND JOHN BEN SHEPPERD, ATTORNEY GENERAL OF TEXAS,

Defendants

MEMORANDUM BY THE STATE OF ARKANSAS

TOM GENTRY,
Attorney General of
The State of Arkansas,
Little Rock, Arkansas;

E. J. BALL,
Special Assistant to
the Attorney General,
Fayetteville, Arkansas.

October 22, 1953.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. —, Original

STATE OF ARKANSAS,

Complainant,

vs.

STATE OF TEXAS AND JOHN BEN SHEPPERD, ATTORNEY GENERAL OF TEXAS,

Defendants

MEMORANDUM BY THE STATE OF ARKANSAS

This Memorandum is filed in further response to certain questions raised by members of the Court during the oral argument of this case on October 21, 1953.

1. Several questions were asked concerning the status of the University of Arkansas.

The University has been a State instrumentality since the University was founded in 1871. Arkansas Stats. (1947), § 80-2301 *et seq.* All of the property used by the University is owned by the State of Arkansas. Arkansas Stats. (1947), § 80-2849-57; 80-2905; 80-3311. The Arkansas statutes, as well as the decisions of the Arkansas Supreme Court, have made it clear that the University is a State agency and instrumentality. *Jacobs* v. *Sharp*, 211 Ark.

865, 202 S.W. 2d 964 (1947) (The Board of Trustees of the University of Arkansas ". . . as a public agency of the State of Arkansas . . ." is authorized to construct buildings, etc.); *Vincenheller* v. *Reagan*, 69 Ark. 460, 474, 64 S.W. 278 (1901) ("The Arkansas Industrial University [now University of Arkansas] is an institution of the state, and we have already seen, subject to its control and government, through its own agents and appointees,—is an instrument of the state in the performance of a governmental work; . . ."). See also *Lindsay* v. *White*, 212 Ark. 541, 206 S.W. 2d 762 (1947); *Hudson* v. *Higgins*, 175 Ark. 585 (1927); *State* v. *Sloan*, 66 Ark. 575, 53 S.W. 47 (1898). Claims against the University of Arkansas, like claims against other units of the Government of the State of Arkansas, are processed not in the courts but before the State of Arkansas Claims Commission.

2. Several questions also were asked as to whether, because a question of Texas law might be involved in the case, this Court on discretionary grounds should decline to exercise or should defer exercising its jurisdiction over the controversy.

It is submitted that the existence of a question of state law furnishes no ground for denying the State of Arkansas access to this Court for a judicial determination of the controversy. This is a controversy between two sovereign States—the State of Arkansas and the State of Texas. The Judicial Code, enacted by the Congress pursuant to the provisions of the Constitution, confers on this Court "original and exclusive jurisdiction" of "all controversies between two or more states". 28 U.S.C. § 1251(a)(1). This is a jurisdiction which this Court does not share with any inferior federal court, nor with any state court. The policy

of the Congress is made unmistakably clear by the Reviser's Note to 28 U.S.C. § 1251, which states in part that:

> "The intent of said section 371 (7), (8) [of the previous Judicial Code] that the jurisdiction of the courts of the United States should be exclusive of the courts of the States in controversies to which a State is a party, and suits against ambassadors, public ministers, consuls and vice consuls, is preserved and clarified by this section and section 1351 of this title."

It appears, therefore, that it is this Court—and this Court alone—upon which the Congress has conferred the authority and the duty to adjudicate a controversy such as the present one.

The Court's authority and duty to adjudicate, we respectfully submit, is no less because the controversy may involve a question of state law.

The Court recently has had before it a somewhat comparable contention in connection with the diversity of citizenship jurisdiction of the federal district courts. This was in *Williams* v. *Green Bay & W. R. Co.*, 326 U.S. 549 (1946), where the Court decided (at pages 553-54):

> "Under the rule of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, a federal court in a diversity case applies local law. In conflict of laws cases that may mean ascertaining and applying the law of a State other than that in which the federal court is located. *Klaxon Co.* v. *Stentor Electric Mfg. Co.*, 313 U. S. 487. The fact that the corporation law of another State is involved does not set the case apart for special treatment. The problem of ascertaining the state law may often be difficult. But that is not a sufficient ground for a federal court to decline to exercise its jurisdiction to decide a case properly before it. As we said in *Meredith* v. *Winter Haven*, 320 U. S. 228, 234, 'The diversity jurisdiction

> was not conferred for the benefit of the federal courts or to serve their convenience. Its purpose was generally to afford to suitors an opportunity in such cases, at their option, to assert their rights in the federal rather than in the state courts.' So long as diversity jurisdiction remains, the parties may not be remitted to a state court merely because of the difficulty of making a decision in the federal court. *Meredith v. Winter Haven, supra.*"

In diversity cases the jurisdiction of the federal courts is merely concurrent with that of the state courts. The considerations relied on in the *Williams* case apply all the more forcefully in situations where, like the case at bar, the jurisdiction of the federal court is exclusive rather than concurrent.

If this Court should decline to exercise its jurisdiction in the present case, the State of Arkansas would be deprived of a judicial remedy, unless it were prepared to appear in the state court in Texas and submit to the jurisdiction of that court. This is exactly what the Constitution and the Judicial Code are intended to protect a sovereign State against being compelled to do when it becomes engaged in a controversy with a sister State. As this Court said in *Kentucky v. Indiana*, 281 U. S. 163 (1930) at page 176:

> "Where the states themselves are before this court for the determination of a controversy between them, neither can determine their rights inter sese and this court must pass upon every question essential to such a determination, although local legislation and questions of state authorization may be involved".

Proper adherence to the policy established by the Congress should therefore require that this Court assume jurisdiction over the present controversy. The considerations un-

derlying *Massachusetts* v. *Missouri*, 308 U. S. 1, 17-20 (1939) are inapplicable for the reason that—as set forth in our Reply (pp. 9-10)—the present controversy is an action within the exclusive jurisdiction of this Court.

Respectfully submitted,

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